

***United States Court of Appeals
for the Second Circuit***



APPENDIX

revised
75-7472

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LEE WOLFMAN, individually and on behalf of
himself and all other stockholders of INSTITUTE
OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS,
CORP., FASHION SEWING GUILD, INC., (a New York
corporation), FASHION SEWING GUILD, INC., (a
Delaware corporation),

Plaintiffs-Appellants,

-against-

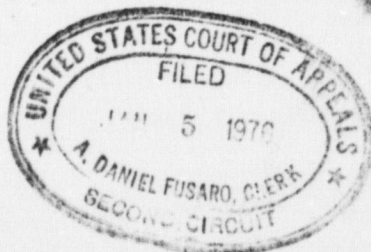
MORTON P. WEISS, SHIRLEY WEISS, NORMAN LIPPMAN,
INSTITUTE OF PATTERN DESIGN, INC., TV CONSUMER
PRODUCTS CORP., FASHION SEWING GUILD, INC., (a
New York Corporation), FASHION SEWING GUILD,
INC., (a Delaware corporation) and GOLDEN RULE
INTERNATIONAL, INC., (a New Jersey corporation),

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX

JESSEL ROTHMAN, P.C.
Attorney for Plaintiffs-Appellants
170 Old Country Road
Mineola, New York
516 294-9449



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D. C. Form No. 108 Rev.

ATTORNEYS

AGAINST

D'AMATO COSTELL & SHEA (12-6-73)
116 John St- NYC 10038 (BA 7-518)
(FOR DEPT. Norman Lippman)

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	
J.S. 5 mailed X	Clerk	11/24/71	H. J. R.	15	—
		11/26/71	H. J. R.	5	—
J.S. 6 mailed ✓	Marshal	8/14/71	Rothman	5	—
		8/17/71	THE 25	5	—
Basis of Action:	Docket fee				
BREACH OF CONTRACT.					
\$12,000.00	Witness fees				
Action arose at:	Depositions				

LIPPMAN, NORMAN, INDIVIDUALLY, vs. MORTON P. WEISS, ET-AL

71 CIV. 5138

DATE	PROCEEDINGS	Date Order Judgment Made
No. 23-71	Filed Complaint, Issued Summons.	AHS
ec. 23-71	Filed ANSWER of deft. Norman Lippman, to complaint,	
ec. 28-71	Filed ANSWER of Morton P. Weiss and Shirley Weiss to complaint, and counterclaim.	EC&H
2/29/71	Filed Summons and marshals ret. and served: Morton P. Weiss on 12/9/71 and Morton P. Weiss on 12/9/71 and Shirley Weiss on 12/9/71 and Norman Lippman on 12/2/71 and TV Consumer Products Inc. on 12/9/71 and Institute of Pattern Design Inc. on 12/9/71 and Fashion Sewing Guild Inc. on 12/9/71	
3.11-73	Filed plttf's affidavit & notice of motion ret. on 4-24-73 striking, answer of deft. Morton Weiss.	
3.19-73	Filed affidavit of D.M. Hoffman in support of deft's Weiss motion.	
3.19-73	Filed plttf's notice of motion to strike answer ret. 4-24-73.	
3.1-73	Filed affidavit of D.M. Hoffman in opposition to plttf's motion.	
3.17-73	Filed MEMO-END. on motion dtd 4-11-73. Motions to strike the answers are referred to Mag. Jacobs, for assignment for a hearing and report. This action has been before Mag. Raby for pre-trial purposes and that proceeding is the subject of the plttf's second motion. CANNELLA, J. (mn)	
3.17-73	Filed MEMO-END. on motion dtd 4-20-73. Motion withdrawn. CANNELLA, J. (mn)	
3.17-73	Filed Report of United States Magistrate Raby.	
3.17-73	Filed Order that Mitchell Horn is substituted as atty for deft. CANNELLA, J.	
3.17-73	Filed Affidvt of David M. Hoffman in opposition to the motion by plttfs for an order striking the deft Morton P. Weiss's answer.	
3.17-73	Filed Affidvt of Mitchell J. Horne in opposition to plttf's motion for a default or to strike the answer of the deft or in the alternative to compel the deft to submit to a deposition by oral examination.	
Nov. 9-73	Filed plttfs' affirmation of Jessel Rothman and Notice of Motion for an order for leave to file an amended supplemental summons and complaint. Ret. 11-14-73	
Nov. 9-73	Filed plttfs' Notice of Motion for an order to strike demand for interrogs. Ret. 11-14-73.	
Nov. 9-73	Filed affidvt. of Robert E. Meshel in opposition to plttf L. Wolfman's motion to strike interrogatories.	
Nov. 9-73	Filed deft N. Lippman's memorandum of law	
Nov. 9-73	Filed Plttf's memorandum of law	
Nov. 13-73	Filed reply affirmation of Jessel Rothman in reply to affidvt. of Robert E. Meshel.	
Nov. 15-73	Filed memo endorsed on motion filed 11-9-73. The instant motion for leave to file and serve and amended and supplemental summons and complaint is referred to Magistrate Raby to hear and report. So ordered- CANNELLA, J. mailed notices	
Nov. 15-73	Filed memo endorsed on motion filed 11-9-73. This motion, which involves the conduct of pre-trial discovery, is referred to Magistrate Raby, who has heretofore been assigned to supervise the pre-trial proceedings in this case. So ordered- CANNELLA, J.	
Dec. 4-73	Filed affidvt. of Robert E. Meshel in support of your deponent's application to be substituted as attys. for deft. Norman Lippman.	
Dec. 4-73	Filed deft. Norman Lippman's interrogs to plttf. Lee Wolfman	
Dec. 4-73	Filed report of U.S. Magistrate Harold J. Raby dated 11-30-73	
Dec. 4-73	Filed Memo Endorsed- motion disposed of as indicated in Report of Magistrate Harold J. Raby dated 11-30-73. Answers to be filed within 30 days from entry hereof. So ordered- CANNELLA, J. (m/n)	
Dec. 4-73	Filed Memo Endorsed- motion granted on consent, proposed amended complaint to be filed within 20 days from entry of this order. So ordered- CANNELLA, J. (mn)	
Dec. 6-73	Filed consent and order substituting attys. for deft. Norman Lippman. So ordered- CANNELLA, J.	
Dec. 29-73	Pre-trial conference held- Raby, U.S. Mag.	

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED IN EMOLUMENT RETURNS
		PLAINTIFF	DEFENDANT	
Feb. 21-74	Filed pliffs' notice of motion for an order to permit pliffs to file their supplemental summons and complaint and interrogs. nunc pro tunc, and for an order to compel. Ret. 3-7-74			
Feb. 21-74	Filed pliff. Lee Wolfman answers deft. Norman Lippman Interrogs.			
March 6-74	Filed deft. Norman Lippman's affdvt. by Robert E. Meshel in opposition to pliffs' motion for an order to file an amended supplemental complaint & summons.			
MARCH 7-74	PRE-TRIAL CONFERENCE HELD BY Raby, U.S. Mag.			
March 18-74	Filed memo endorsed on motion filed on 2-21-74--Memorandum and Order-- ordered that the report of Magistrate Raby dated 3-8-74 is confirmed and adopted.- that pliff's motion be granted to the extent of permitting them to serve and file their proposed amended and supplemental summons and complaint no later than 28 days from the date of entry of this order etc.- that in all other respects, the motion be denied, if already served- no need to re-serve the answers. CANNELLA, J. (m/n)			
March 29-74	Filed supplemental and amended complaint.			
Apr. 19-74	Filed supplemental summons and return- served: Golden Rule International, Inc. by Kenneth Birnbaum on 12-4-73.			
April 74	PRE-TRIAL CONFERENCE HELD BY Raby, J.			
Apr. 26-74	Filed deft. Norman Lippman's notice of taking depositions of pliffs. on 5-30-74.			
May 20-74	Filed pliff's notice of motion for a protective order ret. 5-27-74.			
June 3-74	Filed stip & order that pliff's motion for a protective order is adjourned from 5-28-74 to 6-11-74. So ordered- CANNELLA, J.			
June 4-74	Filed pliff's affdvt. & notice of motion for default judgment and to compel production of books and records...Ret. 6-11-74..			
June 12-74	Filed deft. Norman Lippman's affdvt. of Robert E. Meshel in opposition to pliff's motion for a protective order.			
June 12-74	Filed deft. Morton P. Weiss and all other defts. except Norman Lippman affdvt. of Mitchell Jon Horne in opposition to pliff's motion.			
June 12-74	Filed memo endorsed on motion filed 5-20-74. Motion referred to Magistrate Raby to hear and report. So ordered- CANNELLA, J. (m/n)			
June 12-74	Filed memo endorsed on motion filed 5-4-74. Motion referred to Magistrate Raby, to hear and report. So ordered- CANNELLA, J. (m/n)			
Jul. 25-74	Pre-trial conference held- Raby, U.S. Mag.			
Aug. 6-74	Filed Report of Magistrate Raby and Order of the Court with memo endorsed- No objections having been made within the ten day period specified by the Magistrate, the foregoing report is hereby approved and it is accordingly so ordered- CANNELLA, J. (m/n)			

JUDGE CANNELLA

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT REPORTED BY EXHIBIT RETURNS
		PLAINTIFF	DEFENDANT	
Feb. 21-74	Filed pliffs' notice of motion for an order to permit pliffs to file their supplemental summons and complaint and interrog. nunc pro tunc, and for an order to compel. Ret. 3-7-74			
Feb. 21-74	Filed pliff. Lee Wolfman answers deft. Norman Lippman Interrogs.			
March 6-74	Filed deft. Norman Lippman's affdvt. by Robert E. Meshel in opposition to pliffs' motion for an order to file an amended supplemental complaint & summons.			
MARCH 7-74	PRE-TRIAL CONFERENCE HELD BY RABY, U.S. MAG.			
March 18-74	Filed memo endorsed on motion filed on 2-21-74--Memorandum and Order-- ordered that the report of Magistrate Raby dated 3-8-74 is confirmed and adopted.- that pliff's motion be granted to the extent of permitting them to serve and file their proposed amended and supplemental summons and complaint no later than 26 days from the date of entry of this order etc.- that in all other respects, the motion be denied, if already served- no need to re-serve the answers. CANNELLA, J. (m/n)			
March 29-74	Filed supplemental and amended complaint.			
. 19-74	Filed supplemental summons and return- served: Golden Rule International, Inc. by Kenneth Birnbaum on 12-4-73.			
APRIL 7-74	PRE-TRIAL CONFERENCE HELD BY RABY, J.			
Apr. 26-74	Filed deft. Norman Lippman's notice of taking depositions of pliffs. on 5-30-74.			
May 20-74	Filed pliff's notice of motion for a protective order ret. 5-27-74.			
June 3-74	Filed stip & order that pliff's motion for a protective order is adjourned from 5-28-74 to 6-11-74. So ordered- CANNELLA, J.			
June 4-74	Filed pliff's affdvt. & notice of motion for default judgment and to compel production of books and records...Ret. 6-11-74..			
June 12-74	Filed deft. Norman Lippman's affdvt. of Robert E. Meshel in opposition to pliff's motion for a protective order.			
June 12-74	Filed deft. Morton P. Weiss and all other defts. except Norman Lippman affdvt. of Mitchell Jon Horne in opposition to pliff's motion for			
June 12-74	Filed memo endorsed on motion filed 5-20-74. Motion referred to Magistrate Raby to hear and report. So ordered- CANNELLA, J. (m/n)			
June 12-74	Filed memo endorsed on motion filed 6-4-74. Motion referred to Magistrate Raby, to hear and report. So ordered- CANNELLA, J. (m/n)			
Jul. 25-74	Pre-trial conference held- Raby, U.S. Mag.			
Aug. 6-74	Filed Report of Magistrate Raby and Order of the Court with memo endorsed- No objections having been made within the ten day period specified by the Magistrate, the foregoing report is hereby approved and it is accordingly so ordered- CANNELLA, J. (m/n)			

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(PAGE # 5)

D. C. 110 Rev. Civil Docket Continuation

(CANNELLA, J.)

DATE	PROCEEDINGS	De Jud.
July 29-75	Filed Judgment-- ordered that defts. have judgment against pliffs. Lee Wolfman individually, and on behalf of himself and all other stockholders of Institute of Pattern Design, Inc., TV Consumer Products Corp., Fashion Sewing Guild, Inc., (a New York Corp.) Fashion Sewing Guild, Inc. (a Delaware corp.) dismissing the action for lack of subject matter, and that each party shall bear its own costs of the action. Clerk (m/n)	
8-6-1975	Filed notice of appeal by pliffs from order of J. Cannella (m/N)	
Aug. 6-75	Filed notice that the record on appeal has been certified and transmitted to the USCA on 8-6-75.	
8-17-75	Next proceeding: transcript of proceedings, dated July 23, 1975	

-X

LEE WOLFMAN, Individually, and
on behalf of himself and all
other stockholders of INSTITUTE
OF PATTERN DESIGN, INC.. TV
CONSUMER PRODUCTS, CORP., FASHION SEWING
GUILD, INC. (A NEW YORK CORPORATION),
FASHION SEWING GUILD, INC. (A DELAWARE
CORPORATION),

Plaintiffs,

-against-

CIVIL #

VERIFIED
COMPLAINT

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF
PATTERN DESIGN, INC., TV CONSUMER
PRODUCTS CORP., FASHION SEWING GUILD,
INC. (A NEW YORK CORPORATION),
FASHION SEWING GUILD, INC. (A DELAWARE
CORPORATION)

71 CIV. 5138

Defendants.

-X

The plaintiff, individually, and as a shareholder
of TV CONSUMER PRODUCTS CORP., INSTITUTE OF PATTERN DESIGN,
INC., FASHION SEWING GUILD, INC. (a New York corporation)
and FASHION SEWING GUILD, Inc. (a Delaware corporation) suing
on behalf of himself individually, and all other shareholders
of TV CONSUMER PRODUCTS CORP., INSTITUTE OF PATTERN DESIGN,
INC. and FASHION SEWING GUILD, INC. (a New York corporation)
and FASHION SEWING GUILD, INC. (a Delaware corporation),
similarly situated, and in the name of TV CONSUMER PRODUCTS
CORP., INSTITUTE OF PATTERN DESIGN, INC., and FASHION SEWING
GUILD, INC. (a New York corporation) and FASHION SEWING GUILD,
INC. (a Delaware corporation) to procure judgment in its favor,
complains of the defendant and alleges:

1. INSTITUTE OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS CORP. and FASHION SEWING GUILD, INC. (a Delaware corporation) are corporations organized and existing under the laws of the State of Delaware.

2. FASHION SEWING GUILD, INC. (a New York corporation) is a corporation organized and existing under the laws of the State of New York.

3. NORMAN LIPPMAN is a citizen of the State of New York.

4. LEE WOLFMAN is a citizen of the State of New Jersey.

5. MORTON P. WEISS and SHIRLEY WEISS are husband and wife, and upon information and belief are citizens of the State of New Jersey.

6. That at all times hereinafter mentioned the plaintiff LEE WOLFMAN has been and still is the actual owner and holder of record of fifty (50%) per cent of the issued and outstanding shares of common stock of the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS CORP.

7. On information and belief, at all times hereinafter mentioned, MORTON P. WEISS has been and still is the actual owner (although SHIRLEY WEISS may be the holder of record) of fifty (50%) of all the issued and outstanding shares of stock of the defendant, TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC.

8. That INSTITUTE OF PATTERN DESIGN, INC. is the owner of all the issued and outstanding shares of stock of

MAGIC SEAMSTRESS COMPANY, FASHION SEWING GUILD, INC. (a New York corporation, FASHION SEWING GUILD, INC. (a Delaware corporation), NWSR, INC. and SRLW-TV, INC.

9. NORMAN LIPPMAN has acted as auditor and accountant for all of the aforementioned corporations and as agent for the corporations as hereinafter set forth.

10. The matters in controversy exceed, in excess of interest and cost, the sum of \$10,000.00.

11. That the plaintiff brings this action on behalf of himself individually and on behalf of all stockholders of the defendant corporations similarly situated.

12. The plaintiff is, and was, at the time of the transactions hereinafter complained of, a 50% stockholder of the defendant corporation and he does adequately and fully represent the interest of such shareholders similarly situated in enforcing the rights of the defendant corporations in the transactions hereinafter alleged.

13. That the directors of TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC. and of all wholly-owned subsidiaries, are MORTON P. WEISS, SHIRLEY WEISS, LEE WOLFMAN and MARY LOU WOLFMAN.

14. That the officers of TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC. are MORTON P. WEISS, President and LEE WOLFMAN, Secretary-Treasurer, but MORTON P. WEISS is the chief operating officer.

15. That plaintiff has neither demanded nor requested before the commencement of this action the defendant

corporation through its officers, board of directors, or stockholders that it commence an action against the individual defendants for the wrongful acts committed by them for the reason that the defendants are 50% stockholders, represent 50% of the board of directors, and are, in fact, the operational heads of said corporations and in control thereof and that it would be futile and unavailing to demand that they would cause an action to be brought against themselves which, if successful, would result in judgments against themselves.

16. This action is not a collusive one to confer on a court of the United States jurisdiction over any action over which it would not otherwise have jurisdiction.

17. That since September 23, 1970, to date, MORTON P. WEISS, SHIRLEY WEISS and NORMAN LIPPMAN and other persons unknown have entered into a conspiracy for the benefit, directly or indirectly, of themselves, to waste and divert the assets of TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN, INC.

18. The acts and transactions hereinafter alleged, which were committed to the detriment of the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS CORP. were all committed in pursuance and furtherance of said conspiracy and, upon information and belief, were committed or agreed to among the conspirators in the State of New York.

A9

19. With regard to the INSTITUTE OF PATTERN DESIGN, INC.:

(a) The INSTITUTE OF PATTERN DESIGN, INC. distributes and sells through a staff of salesmen a pattern fitting and cutting manual known as the "Dot Pattern Kit" pursuant to a sole distributorship from Dot Pattern Publishing Company.

(b) That in December, 1970, the board of directors of the INSTITUTE OF PATTERN DESIGN, INC. authorized the formation of two (2) corporations, both called FASHION SEWING GUILD, INC., one to be incorporated in the State of New York, and the other in the State of Delaware, respectively: said corporations to enter into an agreement with Modeverlag Lutterloh, publishers of a competitive manual or kit known as "The Golden Rule Book".

(c) That the corporation authorized, NORMAN LIPPMAN, the defendant herein, to negotiate a contract for distributing said book in those states where Modeverlag Lutterloh did not have exclusive dealership.

(d) In furtherance of said conspiracy, the defendant NORMAN LIPPMAN entered into said sole distributorship agreement with Modeverlag Lutterloh in his own name instead of the corporate name and the defendants, MORTON P. WEISS, SHIRLEY WEISS and NORMAN LIPPMAN then proceeded to cause corporate monies to be used to purchase "The Golden Rule Book" and to divert the profits from the sale of said "The Golden Rule Book" to their own personal uses and not

for the corporate purposes of the Institute of Pattern Design, Inc.

(e) That said defendants have appropriated stock of FASHION SEWING GUILD, INC. and have used said corporate name and organization for the purposes of implementing sales of "The Golden Rule Book" to the detriment of the sale of "Dot Pattern Kit A

(f) Upon information and belief, the defendants and each of them caused the salesmen of the INSTITUTE OF PATTERN DESIGN, INC. to cease selling the "Dot Pattern Book" and to commence selling "The Golden Rule Book" as employees of FASHION SEWING GUILD, INC. diverting all monies due to the INSTITUTE OF PATTERN DESIGN, INC. to either their own personal account, or the account of FASHION SEWING GUILD, INC.

(g) Upon information and belief, the defendants caused the inventory and assets of INSTITUTE OF PATTERN DESIGN, INC. to be sold to persons unknown and diverted the monies therein received for their own personal gain.

(h) Upon information and belief, MORTON P. WEISS and SHIRLEY WEISS, his wife, charged personal expenses to the corporation and diverted the proceeds thereof for their own personal gain.

(i) Upon information and belief, all the defendants above-named violated their fiduciary obligations to the

defendant corporations by failing to promote the sale of MAGIC SEAMSTRESS and the "Dot Pattern Book" and by diverting sales to "The Golden Rule Book", the proceeds of which were pocketed individually or deposited in the name of FASHION SEWING GUILD, INC.

(j) All of said acts and omissions constitute a violation of the fiduciary obligation owed by the said individual defendants as officers, directors, agents and auditors of the Corporation under State statutes and common law.

20. While the individual defendants here were officers, directors, agents and auditors of INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC. and all wholly-owned subsidiary corporations, and were thus charged with the duties of such position, they, and each of them, wrongfully failed to perform such duties as such, and, on the contrary, each was so negligent and careless that the funds and the property of TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN, INC. were squandered, grossly mismanaged, and wasted and the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC. thereby suffered great loss and the value of the shares of the plaintiff were greatly impaired and reduced thereby and the plaintiff also lost much gain it would have received had the individual defendants herein performed the individual duties which it was incumbent on them to perform. Solely by reason of the said wasting of assets by the individual defendants and solely by reason of the gross mismanagement of the affairs

of the corporation by the individual defendants and solely by reason of the said misconduct and breach of duty by the individual defendants as directors, officers and agents of TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN, INC., the said corporations have suffered losses of upward of \$200,000., for which the individual defendants should by proper decree of this court be compelled to account and make restitution to the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC.

(22) The plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment:

a) That the plaintiff, INSTITUTE OF PATTERN DESIGN, INC., be adjudged to be the lawful owner and holder of all the issued and outstanding shares of common stock of FASHION SEWING GUILD, INC. (a New York corporation) and FASHION SEWING GUILD, INC. (a Delaware corporation).

b) That FASHION SEWING GUILD, INC. be directed to transfer its stock to the INSTITUTE OF PATTERN DESIGN, INC. in such manner as required by the laws of the State of New York and Delaware and to deliver to the said corporation a new certificate of stock in due and proper form.

c) Requiring the individual defendants to account to the corporation for their acts and conduct prescribed in the Complaint.

d) Requiring the said defendants, jointly and severally, to pay over to the corporation any losses that

may have been found as a result of said accounting to have been sustained by TV CONSUMER PRODUCTS, INC. and/or INSTITUTE OF PATTERN DESIGN, INC. and any profits or frauds that may be found on said accounts to have been received by the defendants.

(e) Granting such other and further relief as to this Court may seem just and proper.

(f) Awarding to the plaintiff the costs and disbursements of this action together with counsel fees and accounting fees.

Dated: New York, New York
November 19, 1971.

HALPERN & ROTHMAN

BY:

JESSEL ROTHMAN,
A Partner.

Office & P.O. Address
605 Third Avenue
New York, N. Y. 10016

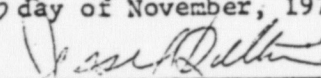
STATE OF NEW YORK)
COUNTY OF NEW YORK)

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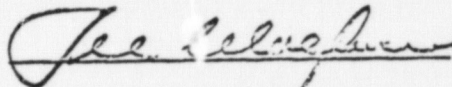
LEE WOLFMAN, being duly sworn, deposes and says that deponent is the plaintiff in the within action; that deponent has read the foregoing Complaint and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters deponent believes it to be true.

Sworn to before me this

15 day of November, 1971.


Notary Public

JESSEL ROTHMAN
Notary Public, State of New York
Qualified in Queens County
No. 41-33785
Commission Expires March 30, 1973

 (L.S.)

A15

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

-----x
LEE WOLFMAN, Individually, and on behalf of
himself and all other stockholders of INSTITUTE
OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS
CORP., FASHION SEWING GUILD, INC. (A NEW YORK
CORPORATION), FASHION SEWING GUILD, INC. (A
DELAWARE CORPORATION)

Index No.
71 CIV.5138

Plaintiffs

- against -

MORTON P. WEISS, SHIRLEY WEISS, NORMAN LIPPMAN,
INSTITUTE OF PATTERN DESIGN, INC., TV CONSUMER
PRODUCTS CORP., FASHION SEWING GUILD INC., (A
NEW YORK CORPORATION), FASHION SEWING GUILD,
INC. (A DELAWARE CORPORATION)

Defendants.

-----x
Defendant, NORMAN LIPPMAN, by his attorney, ADOLPH H.
SIEGEL, answering the complaint herein, respectfully alleges as
follows:

FIRST: Denies any knowledge or information sufficient
to form a belief as to the allegations of Paragraphs "1", "2",
"6", "7", "8", "10", "11", "12", "13", "14", "15" and "16" of the
complaint.

SECOND: Denies the allegations of Paragraph "9", except
admits that NORMAN LIPPMAN is a partner of LIPPMAN & LINDERMAN,
CPA's who performed accounting services for INSTITUTE OF PATTERN
DESIGN, INC., TV CONSUMER PRODUCTS CORP., ~~FASHION SEWING GUILD,~~
~~DELAWARE CORPORATION, FASHION SEWING GUILD, INC.~~
~~NEW YORK CORPORATION, FASHION SEWING GUILD, INC.~~

THIRD: Denies each and every allegation of Paragraphs
"17" and "18".

FOURTH: Denies each and every allegation of Paragraphs "19" (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) of the complaint except admits:

(a) That Defendant was authorized by the principals of the INSTITUTE OF PATTERN DESIGN, INC., the Plaintiff, LEE WOLFMAN, MORTON P. WEISS and SHIRLEY WEISS to negotiate with MODEVERLAG LUTTERLOH for the exclusive dealership of a manual or kit known as "THE GOLDEN RULE BOOK", said dealership to be granted to FASHION SELLING GUILD INC., a corporation formed or to be formed, having as its principals LEE WOLFMAN, MORTON P. WEISS and SHIRLEY WEISS.

(b) That the name of such corporation FASHION SEWING GUILD, INC. was furnished to Defendant by JESSEL ROTHMAN, the attorney for INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC., whose principals were upon information and belief LEE WOLFMAN, MORTON P. WEISS and SHIRLEY WEISS.

(c) That in accordance with said employment, the Defendant, NORMAN LIPPMAN negotiated for the exclusive dealership of a manual or kit known as "THE GOLDEN RULE BOOK" and obtained same in the name of FASHION SEWING GUILD, INC.

FIFTH: Denies each and every allegation of Paragraph "20" of the complaint.

AS AND FOR AN AFFIRMATIVE DEFENSE

SIXTH: Defendant repeats and malleges each and every allegation contained in Paragraphs numbered "FIRST" through "FIFTH" of the answer herein with the same force and effect as if they were more fully set forth herein.

SEVENTH: That except for Defendant's acts in negotiating the aforesaid contract on behalf of THE FASHION SEWING GUILD INC., the sole actions and duties of the Defendant has been as a partner of LIPPMAN & LINDERMAN, Accountants for the parties herein and their corporations.

EIGHTH: That at no time mentioned herein has the Defendant received any corporate monies or profits, other than for professional services rendered or acted in any managerial or other capacity on behalf of any of said corporations.

AS AND FOR AN AFFIRMATIVE DEFENSE AND BY WAY OF COUNTERCLAIM AGAINST THE PLAINTIFF, LEE WOLFMAN, Individually and on behalf of himself and all other stockholders of INSTITUTE OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS CORP., FASHION SEWING GUILD, INC. (A New York Corporation) FASHION SEWING GUILD, INC. (A Delaware Corporation).

NINTH: Defendant repeats and realleges each and every allegation contained in Paragraphs numbered "FIRST" through "EIGHTH" of the answer herein with the same force and effect as if they were more fully set forth herein.

TENTH: That the allegations of the complaint and all of the acts on the part of the Plaintiffs were and are without just cause or without probably cause and without basis in law or in fact, and are known to the Plaintiffs to be without just cause and without probable cause and are solely out of vicious and malicious purpose of injuring and damaging the Defendant and representing a malicious and wantonly use and abuse of the legal process by Plaintiffs and their attorneys.

ELEVENTH: That such actions by Plaintiff have caused the Defendant considerable mental anguish and have impuned on the character and reputation of the Defendant without any basis in fact or law.

TWELFTH: That in addition thereto, Defendant has been caused to expend and will be caused to expend considerable time and expense in the defense of such action all to Defendant's damage to the extent of TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS.

WHEREFORE, The Defendant, NORMAN LIPPMAN demands judgment against the Plaintiffs, individually and jointly:

(a) Dismissing the complaint herein.

(b) Granting judgment to the Defendant on the counter claim against the Plaintiffs, individually and jointly in the sum of TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS.

(c) Granting such other and further relief as to this court may seem just and proper.

(d) Awarding to the Defendant, the costs and disbursements of this action, together with counsel fees.

Dated: Lindenhurst, N.Y.
December 21, 1971

ADOLPH H. SIEGEL
Attorney for Defendant,
NORMAN LIPPMAN
Office & P.O. Address
145 E. Sunrise Highway
Lindenhurst, N.Y. 11757
888-8700

STATE OF NEW YORK)
) ss.:
 COUNTY OF SUFFOLK)

NORMAN LIPPMAN, being duly sworn, deposes and says: that deponent is the Defendant in the within action; that deponent has read the foregoing answer and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters deponent believes it to be true.

Norman Lippman
 NORMAN LIPPMAN

Sworn to before me this
 21st day of December, 1971

Adolph H. Siegel
 ADOLPH H. SIEGEL
 Notary Public, State of New York
 No. 30-2987215
 Qualified in Nassau County
 Commission Expires March 30, 1972

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT

Civil Action File No. 71 Civ.
5138

LEE WOLFMAN, etc., et als.

Plaintiffs,

-against-

ANSWER AND COUNTERCLAIM

MORTON P. WEISS, etc., et als.

Defendants.

MORTON P. WEISS and SHIRLEY WEISS, Defendants in the above matter, as and for their answer state the following:

1. Defendants, on information and belief, admit the allegations of Paragraph 1 of the Complaint, said corporations purported to have been formed by Plaintiff, LEE WOLFMAN, and his attorney, J. Rothman, who represented the same to Defendants.
2. Defendants repeat the answer set forth above as their answer to paragraph 2 of the said Complaint.
3. Defendants admit the allegations of paragraph 3 of the Complaint.
4. Defendants admit the allegations of paragraph 4 of the complaint.
5. Defendants admit the allegations of paragraph 5 of the Complaint.
6. Defendants admit the allegations of paragraph 6 of the Complaint, except that Plaintiff, LEE WOLFMAN, has from time to

time asserted that he is the actual owner of more than 50% of said shares, as more fully set forth in the counterclaim hereto.

7. Defendants admit the allegations of paragraph 7 of the Complaint.

8. Defendants admit the allegations of paragraph 8 of the Complaint.

9. Defendants admit the allegations of paragraph 9 of the Complaint except as to Fashion Sewing Guild, Inc., NWSR, INC. and SRLW-TV, INC.

10. Defendants deny the allegations of paragraph 10 of the Complaint.

11. Defendants deny the allegations of paragraph 11 of the Complaint.

12. Defendants admit so much of paragraph 12 as alleges that plaintiff is a 50% stockholder of defendant corporation but denies that he represents the interest of any other shareholder.

13. Defendants admit that the directors of TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC. are MORTON P. WEISS, SHIRLEY WEISS, LEE WOLFMAN and MARY LOU WOLFMAN, but deny that directors were elected in respect to all wholly-owned subsidiaries or that stock was issued in respect thereto, said occurrences having been prevented by the actions of plaintiff, LEE WOLFMAN.

14. Defendants admit the allegations of paragraph 14 of the Complaint.

15. Defendants deny the allegations of paragraph 15 of the Complaint.

16. Defendants deny the allegations of paragraph 16 of the Complaint.

17. Defendants deny the allegations of paragraph 17 of the Complaint.

18. Defendants deny the allegations of paragraph 18 of the Complaint.

19. Defendants admit the allegations of paragraph 19 (a) of the Complaint.

(b) Defendants admit the allegations of paragraph 19 (b) of the Complaint insofar as it alleges or is meant to allege that the Board of Directors authorized the formation of a corporation and requested that its accountant, Norman Lippman, attempt to obtain a contract from the publishers of a kit called The Golden Rule Book.

(c) Defendants admit the allegations of paragraph 19 (c) of the Complaint.

(d) Defendants deny the allegations of paragraph 19 (d) of the Complaint.

(e) Defendants deny the allegations of paragraph 19 (e) of the Complaint.

(f) Defendants deny the allegations of paragraph 19 (f) of the Complaint.

(g) Defendants deny the allegations of paragraph 19 (g) of the Complaint.

(h) Defendants deny the allegations of paragraph 19 (h) of the Complaint.

(i) Defendants deny the allegations of paragraph 19 (i) of the Complaint.

(j) Defendants deny the allegations of paragraph 19 (j) of the Complaint.

20. Defendants deny the allegations of paragraph 20 of the Complaint.

21. No answer is made in respect to paragraph 21 of the Complaint insofar as the same is not set forth in the Complaint.

22. Defendants deny the allegations of paragraph 22 of the Complaint.

WHEREFORE, Defendants demand judgment dismissing the Complaint, awarding the defendants costs and disbursements of this action and

granting such other and further relief as this Court deems just and proper.

STATEMENT OF SEPARATE DEFENSE

As and for their separate defense, defendants state as follows:

FIRST SEPARATE DEFENSE

1. The complaint should be dismissed by the Court for lack of jurisdiction on the grounds that the plaintiff, LEE WOLFMAN and individual defendants, MORTON P. WEISS and SHIRLEY WEISS, are all residents of the State of New Jersey; which fact destroys diversity and which facts are set forth as factual allegations in the Complaint.

COUNTERCLAIM

By way of counterclaim against plaintiffs, defendants, MORTON P. WEISS and SHIRLEY WEISS allege as follows:

1. Morton P. Weiss and Shirley Weiss are husband and wife and first became associated with the Plaintiff, LEE WOLFMAN in April, 1970 through Steven Rappaport who purported to be a friend and associate of Plaintiff, LEE WOLFMAN.

2. At all times relevant hereto, before and since that date, Defendant and Counterclaimant, MORTON P. WEISS has been a salesman, having formed in conjunction with Steven Rappaport a company known as MWSR to market a sewing book called Dot Pattern.

3. Rappaport alleged and asserted to Counterclaimant, MORTON P. WEISS, that Plaintiff, Lee Wolfman and Rappaport were engaged in the marketing of a coffeemaker under the corporate name of SRLW-TV, Inc.

A-24

4. Rappaport further advised that LEE WOLFMAN, his partner, would resent Rappaport engaging in business with Counterclaimant, MORTON P. WEISS, unless LEE WOLFMAN had a part in that business.

5. As a result of this discussion and a subsequent meeting with LEE WOLFMAN, Rappaport and Counterclaimant, MORTON P. WEISS and at the direction of LEE WOLFMAN, who was represented to Counterclaimant, MORTON P. WEISS by Rappaport and by himself to be an experienced advertising, promotion and financing expert who could obtain advertising time at significant discounts through his contacts, Counterclaimant, MORTON P. WEISS, acquiesced in the determination by Rappaport and LEE WOLFMAN that both companies should coordinate their activities. As a result, INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS were formed, with interests allocated with 37½% to Rappaport, 30% to LEE WOLFMAN and 25% to Counterclaimant, MORTON P. WEISS, with a friend of Rappaport's, an accountant, holding the balance.

6. At the time that these corporations were formed, Counterclaimant, MORTON P. WEISS, was a salesman and sales manager and was not an officer for INSTITUTE OF PATTERN DESIGN, but acted as a Vice-President of TV CONSUMER PRODUCTS with LEE WOLFMAN and Steven Rappaport as the primary officers and directors. At the time of the formation of these companies, LEE WOLFMAN and Steven Rappaport demanded that Counterclaimant, MORTON P. WEISS, contribute \$5,000.00 as a capital contribution, which he did.

7. Thereafter, Steven Rappaport hired as an outside auditor Norman Lippman, who performed audits and as a result Mr. Lippman informed all shareholders that the amounts being drawn by the parties, particularly Steven Rappaport were creating an operating deficit. Counterclaimant, MORTON P. WEISS, objected to this situation and LEE WOLFMAN acquiesced in his objection.

8. Thereupon, LEE WOLFMAN suggested that his attorney, J. Rothman, be employed to represent Counterclaimant, MORTON P. WEISS, LEE WOLFMAN and other interests, to attempt to seek a solution.

9. Thereafter, J. ROTHMAN recommended the termination of Steven Rappaport's employment forthwith, the election of new officers of both companies and, under J. Rothman's direction and advice, this was done.

10. As a result of the foregoing actions the operations of the companies were brought to a halt and the bank account frozen.

11. In an attempt to resolve the deadlock situation, J. Rothman, representing Counterclaimant, MORTON P. WEISS and Plaintiff, LEE WOLFMAN, negotiated with Steven Rappaport for the purchase of Steven Rappaport's interests, in the sum of \$25,000.00, an agreement in respect to which was reached on September 23, 1970.

12. The agreement in respect thereto was consummated on October 16, 1970 at which time Counterclaimant, MORTON P. WEISS,

and LEE WOLFMAN agreed to pay a \$5,000. down payment and \$5,000. per month to Steven Rappaport for his entire interest and that of all other parties. In order to make the payments, the initial down payment was contributed by LEE WOLFMAN and Counterclaimant, MORTON P. WEISS, individually and equally and the balance was paid by loan from the corporations to LEE WOLFMAN and counterclaimant, MORTON P. WEISS, as designated by J. Rothman and LEE WOLFMAN.

13. At this time, it was represented to Counterclaimant, MORTON P. WEISS by LEE WOLFMAN and J. Rothman that Counterclaimant, MORTON P. WEISS would be an equal shareholder and would participate in management with LEE WOLFMAN with Counterclaimant, MORTON P. WEISS, to run the sales operation and LEE WOLFMAN to devote substantial time and effort to the operation in respect to advertising, financing and promotion and the obtaining of new products.

14. As part of this agreement and for the services which the parties agreed to perform, Counterclaimant, MORTON P. WEISS was to receive the sum of \$750.00 per week for the full time operation of sales and distribution, with LEE WOLFMAN to receive \$375.00 per week for advertising, financial and new product selection advice and activity. It was further agreed that LEE WOLFMAN and Counterclaimant, MORTON P. WEISS were to be equal shareholders in the operation and that a shareholders' agreement was to be drawn by J. Rothman for the benefit of both parties.

15. As a further part of the understanding of the parties at this time, there was to be incorporated into the understanding by the parties the continuation of a medical reimbursement agreement which arose when Counterclaimant, SHIRLEY WEISS, while on a sales trip in behalf of the companies, for the purpose of training female sales personnel, was injured in a fall. In order

to compensate Counterclaimant, SHIRLEY WEISS, for this injury, which the parties were advised was not covered by any insurance, LEE WOLFMAN had introduced in May, 1970, while Steven Rappaport was still a Board member and shareholder, a medical reimbursement plan. This was unanimously approved by the parties at that time and its continuation was part of the understanding between LEE WOLFMAN and Counterclaimant, MORTON P. WEISS, in October, 1970. Shortly after the agreement of October, 1970, LEE WOLFMAN began a series of actions to delay, impede, negate and breach the understanding reached with Counterclaimant, MORTON P. WEISS and to defraud INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS, and to divert their assets for his own gain and benefit, and that of Media Purchasing Corp., a wholly-owned subsidiary of Lee-Jeffreys, Inc., more particularly as set forth below:

A. Counterclaimant, MORTON P. WEISS, was advised by J. Rothman that as part of the Steven Rappaport closing, an error was made in the transfer documents in respect to the stock purchased so that LEE WOLFMAN had received 55% of the stock and counterclaimant, MORTON P. WEISS had received 45% of the stock. Counterclaimant, MORTON P. WEISS thereafter insisted and continued to insist that LEE WOLFMAN have J. Rothman correct the error but was advised that LEE WOLFMAN had paid \$1,000. more at the closing and was entitled to an "edge". Counterclaimant, MORTON P. WEISS offered to reimburse LEE WOLFMAN \$500.00 if this were true, although no checks were shown to Counterclaimant, who, in fact, did pay \$500. to LEE WOLFMAN directly. During this period, LEE WOLFMAN insisted that his salary be raised to an amount equal to Counterclaimant's and advised that since he, LEE WOLFMAN, held 55% of the stock he could make this change himself.

B. Despite the understanding that LEE WOLFMAN would provide advertising, financial and new product development advice, LEE WOLFMAN failed and refused to devote time and effort to the

All

companies and advised instead that his wife would actively participate in the areas of purchasing, advertising and booking hotel space and acting as liason with TV stations and that checks should be made payable to her. Counterclaimant, MORTON P. WEISS, objected to this breach of the understanding which the parties had reached.

C. In furtherance of his determination to breach the understanding of the parties, divert and defraud INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS and the counterclaimants herein, not only did LEE WOLFMAN not perform the services which he had agreed to but his wife never did perform any services for the corporations but over and despite counterclaimant, MORTON P. WEISS, objections continued to draw a salary of \$375.00 per week. When counterclaimant, MORTON P. WEISS, objected again, LEE WOLFMAN advised that he could sign the checks himself as a majority stockholder and authorized signatory and freeze the bank assets until dual signatures on all corporate accounts could be obtained the same way J. Rothman had done to Steven Rappaport. LEE WOLFMAN made such threats knowing full well that Counterclaimant's sole income was derived from the activities of the corporation and he had no substantial assets or reserves to support his family without said income.

D. In furtherance of the breach of the parties understanding, and of his design to defraud and divert assets from INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS in approximately November, 1970, LEE WOLFMAN insisted that those corporations direct all marketing and advertising business through Media Purchasing Corp. a wholly-owned subsidiary of Lee-Jeffreys, Inc. This was done for the sole purpose of obtaining advertising overrides for that company in which LEE WOLFMAN had a significant stockholder's interest and held a position as an officer and director. Counterclaimant, MORTON P. WEISS, objected to this, asserting that Miller

Advertising was more familiar with the field and with the account it had been handling, that advertising was essential to the companies' operation and that Miller could do a better job and that since LEE WOLFMAN himself was performing no services, Media and Lee-Jeffreys could not perform adequately without experience with the account and mistakes being made. LEE WOLFMAN refused to accede to Counterclaimant, MORTON P. WEISS' position and continued to insist on payments to Media, amounting to approximately \$4,000. per week, including a 9½% increment. As a result of this activity and the continued insistence by LEE WOLFMAN that his wife be paid \$375. per week, Counterclaimant, MORTON P. WEISS, suggested that a house agency be formed to take advantage of the advertising commissions but LEE WOLFMAN again refused and demanded that Media continue to receive the cash flow and override.

E. With these conditions, Counterclaimant, MORTON P. WEISS attempted to obtain a new product line, the Golden Rule Pattern Book, for which a franchise was obtained on a limited basis through the companies' auditor, Norman Lippman. The line was obtained since a competitor had an exclusive franchise for 16 states and non-exclusive sales rights in the balance of the states and the competitor was seriously injuring Dot Pattern sales in all states. Counterclaimant, MORTON P. WEISS, advised that if the competitor could be precluded from selling Golden Rule in the balance of the states and Canada, INSTITUTE OF PATTERN DESIGN could coordinate sales of Dot Pattern and Golden Rule and in that way better compete. LEE WOLFMAN acquiesced.

F. In further efforts to continue the companies' operations during the period of December, 1970 and January, 1971, Counterclaimant, MORTON P. WEISS recognized the need for additional operating funds and obtained a loan from Banker's Trust in the name of INSTITUTE OF PATTERN DESIGN which Counterclaimant,

MORTON P. WEISS, insisted that LEE WOLFMAN co-sign with him, which LEE WOLFMAN did. As part of this loan arrangement, Counterclaimant, MORTON P. WEISS, again insisted that there be a termination of the \$375. per week draw and offered again to reduce his weekly salary. LEE WOLFMAN again refused.

G. Thereafter, it became apparent that INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS could no longer afford Media's advertising bills, at which point LEE WOLFMAN cut off credit to INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS, in essence having drained the company and then eliminating its most important selling tool.

H. At this point, LEE WOLFMAN suggested that counterclaimant, MORTON P. WEISS then utilize a house agency but counterclaimant in attempting to establish a house agency found that in fact Media had not paid bills on a number of accounts where INSTITUTE OF PATTERN DESIGN had, in fact, paid Media and, therefore, as was customary in the advertising business, advertising and credit were denied the house agency until prior payments for advertising ordered by Media were made.

I. At this point, during the Spring of 1971, it became apparent to Counterclaimant, MORTON P. WEISS, that the companies could not continue their operations. Counterclaimant sought the cooperation of LEE WOLFMAN, who again refused, claiming that the pressures of his own business and Lee-Jeffreys were preeminent in his mind, became abusive personally to counterclaimant and refused to act constructively. Series of meetings were held to attempt to resolve the problems but LEE WOLFMAN refused to cooperate. LEE WOLFMAN demanded preferential payment from remaining assets of the companies to Lee-Jeffreys for advertising bills and stated that he would refuse to cooperate until this were done.

J. Thereafter, in order to attempt to liquidate the inventory of the companies which consisted of sewing pattern books, and make

distribution for creditors, Counterclaimant, MORTON P. WEISS, arranged for the sale of some of those books and reduced creditor claims by approximately \$10,000-\$12,000. Despite said counterclaimant's efforts in attempting to carry through the liquidation of the assets and payment to creditors, LEE WOLFMAN maliciously attempted to freeze the bank account during this period, maliciously attempted to freeze the shipment on sales and goods from the warehouse where the goods were stored and refused to make any arrangements for the orderly liquidation of the companies' assets.

K. In fact, Counterclaimant, MORTON P. WEISS offered to continue portions of the operation and to pay a royalty for the benefit of creditors for the rights to sell a crewel book and for the remaining period of the Golden Rule franchise but LEE WOLFMAN again refused. Thereafter, LEE WOLFMAN, through J. Rothman, demanded the books and records of the companies and that all assets of the companies be delivered to him. Counterclaimant, MORTON P. WEISS, arranged for and had the books and records shipped to LEE WOLFMAN'S office by Parcel Service and initially LEE WOLFMAN refused to accept the shipment. Thereafter, Counterclaimant shipped to LEE WOLFMAN'S attention certain of the companies' books which the companies were merchandising and LEE WOLFMAN again refused to accept the shipment. Counterclaimant, MORTON P. WEISS, offered at all times to permit LEE WOLFMAN to liquidate all assets of the corporation in an orderly fashion so long as LEE WOLFMAN made adequate provision for accounting of the funds and did not give preference to Lee-Jeffreys and LEE WOLFMAN refused, in further continuance of the breach of his understanding with Counterclaimant, MORTON P. WEISS, reached in October, 1970, in furtherance of his individual attempts to defraud and divert assets of the companies and in furtherance of the conspiracy to defraud, divert and maliciously interfere with the prospective economic advantages of INSTITUTE OF PATTERN DESIGN and TV

CONSUMER PRODUCTS, the individual counterclaimants in this action and continued to act in breach of his fiduciary obligations to INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS for the purpose of unjustly enriching himself and Lee-Jeffreys and to the detriment of creditors.

WHEREFORE, counterclaimants demand judgment against LEE WOLFMAN and MARY LOU WOLFMAN, LEE-JEFFREYS, INC., MEDIA PURCHASING, INC. for compensatory damages, punitive damages, an accounting to counterclaimants, MORTON P. WEISS and SHIRLEY WEISS, of INSTITUTE OF PATTERN DESIGN and TV CONSUMER PRODUCTS, costs and disbursements of this action, together with counsel fees and any accounting fees required, payment of any losses sustained by the corporations and by counterclaimants individually, for any losses sustained and profits or fraudulent diversions which might be found in said accounts to have been received by LEE WOLFMAN, MARY LOU WOLFMAN, LEE-JEFFREYS, INC. and MEDIA PURCHASING, INC. and such other and further relief as this court may deem just and proper.

ECKHAUS, GUSTON & HOFFMAN
Attorneys for Defendants and
Counter-claimants

By: _____
Herbert M. Guston.
A Member of the Firm.

United States District Court

FOR THE

SOUTHERN DISTRICT

CIVIL ACTION FILE NO.

LEE WOLFMAN, Individually, and on behalf
of himself and all other stockholders of
INSTITUTE OF PATTERN DESIGN, INC., TV
CONSUMER PRODUCTS, INC., FASHION SEWING
GUILD, INC. (A NEW YORK CORPORATION)
FASHION SEWING GUILD, INC. (A DELAWARE
CORPORATION),

Plaintiff s

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF PATTERN
DESIGN, INC., TV CONSUMER PRODUCTS CORP.,
FASHION SEWING GUILD, INC. (A NEW YORK
CORPORATION), FASHION SEWING GUILD, INC.
(A DELAWARE CORPORATION)

Defendant s

SUMMONS

71 CIV. 5138

To the above named Defendant :

You are hereby summoned and required to serve upon

HALPERN & ROTHMAN, ESQS., 605 Third Avenue, New York, N. Y. 10016

plaintiff's attorney, whose address is

an answer to the complaint which is herewith served upon you, within twenty days after service
of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default
will be taken against you for the relief demanded in the complaint.

NOV 24 1971

Date: November 15, 1971.

John L. Edwards (S)
Clerk of Court
B. Edwards 131
Deputy Clerk

[Seal of Court]

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF LEE WOLFMAN		COURT NUMBER 71 CIV 5138
DEFENDANT MORTON P. WEISS, et al		TYPE OF WRIT S/C
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN MORTON P. WEISS	
→	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 2357 Lemoine Avenue or 2150 Center Ave., Fort Lee, N.J.	
AT	Fort Lee, N.J.	
SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:		
HALPERN & ROTHMAN 605 Third Avenue New York, N.Y. 10016		Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. → NO. TOTAL 1 OF 7 CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included. SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.
SPECIAL INSTRUCTIONS:		

 NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR
Jessel Rothman

 TELEPHONE NUMBER
343-0001

 DATE
11-24-71

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.	DEPOSIT/COOE → 40.00	DIST. OF ORIGIN 54	DISTRICT TO SERVE 50	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK Sarah Sawyer			DATE 11-24-71
<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.				
<input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.				
NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) thru. son Gary Weiss - auth. to accept				<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)				FEE (If applicable) \$ 4.00
				MILEAGE \$ ---
DATE(S) OF ENDEAVOR (Use Remarks if necessary) 11/29/71	DATE OF SERVICE 12/9/71	TIME 5.00AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY	
REMARKS ref. endeavor: in Calif. will return 12/2/71 late.				

U.S. MARSHALS SERVICE INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF LEE WOLFMAN		COURT NUMBER 71 CIV 513
DEFENDANT MORTON P. WEISS, et al		TYPE OF WRIT S/C
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN SHIRLEY WEISS	
→	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 2150 Center Ave., Fort Lee, N.J.	
AT		
SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:		
<div style="display: flex; justify-content: space-between;"> <div> <p>Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.</p> <p>CHECK IF APPLICABLE:</p> <p><input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.</p> </div> <div> <p>NO. 2 OF 1</p> </div> </div>		
<p>SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.</p>		
SPECIAL INSTRUCTIONS:		

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR Jesse Weiner		TELEPHONE NUMBER 243-7771	DATE 11-24-71
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.	DEPOSIT/CODE ---	DIST. OF ORIGIN 54	DISTRICT TO SERVE 50
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK Sarah Sawyer		DATE 11-24-71
<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.			
<input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.			
NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) thru. son Gary Weiss - auth. to accept			<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)			FEE (If applicable) \$ 4.00
			MILEAGE \$--
DATE(S) OF ENDEAVOR (Use Remarks if necessary) 11/29/71	DATE OF SERVICE 12/9/71	TIME 5:00 AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY
REMARKS ref. end. not at office			

U.S. MARSHALS SERVICE

INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF THE MOLEMAN	COURT NUMBER 71 CIV 5133
DEFENDANT MORTON P. WEISS, et al	TYPE OF WRIT S/C

SERVE ➔ AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN NORMAN LIPPMAN
	ADDRESS (Street or RFD, Apartments No., City, State and ZIP Code) 237-21 Linden Blvd. Elmont, N.Y.

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:	Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. ➔	NO. TOTAL 3 OF 7
HALBERT & MORTMAN 605 Third Avenue New York, N.Y. 10016	CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.	
	SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.	

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR Jesse R. Mortman	TELEPHONE NUMBER 43-0000	DATE 11-24-71
---	------------------------------------	-------------------------

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. ➔ I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	DEPOSIT/COGE ---	DIST. OF ORIGIN 54	DISTRICT TO SERVE 53	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK Sarah Sawyer			DATE 11-24-71

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)	<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)	FEE (If applicable) \$ 4.00
	MILEAGE \$ 5.28

DATE(S) OF ENDEAVOR (Use Remarks if necessary)	DATE OF SERVICE 12/2/71	TIME AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY
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REMARKS

0

U.S. MARSHALS SERVICE INSTRUCTION AND PROCESS RECORD		INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.					
PLAINTIFF		COURT NUMBER					
DEFENDANT		TYPE OF WRIT					
SERVE: NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONCERN <div style="display: flex; align-items: center;"> <div style="width: 30px; text-align: center; font-weight: bold;">→</div> <div> TV CONSUMER PRODUCTS, INC. ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) & Morton P. Weiss, 2357 Lemoine Ave., Fort Lee, N.J. </div> </div>							
AT	SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: -----		Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. → <table border="1" style="display: inline-table; font-size: x-small;"> <tr> <td style="width: 20px;">NO.</td> <td style="width: 20px;">TOTAL</td> </tr> <tr> <td style="text-align: center;">4</td> <td style="text-align: center;">1 OF 1</td> </tr> </table>	NO.	TOTAL	4	1 OF 1
NO.	TOTAL						
4	1 OF 1						
		CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.					
		SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.					
SPECIAL INSTRUCTIONS: -----							

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR		TELEPHONE NUMBER	DATE
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. →	DEPOSIT/ CODE ---	DIST. OF ORIGIN 54	DISTRICT TO SERVE 50
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK		DATE
<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.			
<input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.			
NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)		<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.	
thru. son Gary Weiss - auth. to accept			
ADDRESS (Complete city if different than shown above)		FEE (If applicable)	MILEAGE
		\$ 4.00	\$ --
DATE(S) OF ENDEAVOR (Use Remarks if necessary)	DATE OF SERVICE	TIME	SIGNATURE OF U. S. MARSHAL OR DEPUTY
11/29/71	12/9/71	5:00 AM PM	
REMARKS			
ref. will return from Calif. late 12/2/71			

U.S. MARSHALS SERVICE

INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OR PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF

COURT NUMBER

DEFENDANT

TYPE OF WRIT

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

INSTITUTE OF PATTERN DESIGN, INC.

ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

8 Morton P. Weiss, 2357 Lemoine Ave., Fort Lee, N.J.

AT

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.

NO. TOTAL
5 OF 1

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.

DEPOSIT/CODE

DIST. OF ORIGIN

DISTRICT TO SERVE

LOCATION OF SUB-OFFICE OF DIST. TO SERVE

54

50

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK

DATE

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

thru. son Garry Weiss - auth. to accept

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable)

MILEAGE

\$4.00

\$7.68

DATE(S) OF ENDEAVOR (Use Remarks if necessary)

DATE OF SERVICE

TIME

SIGNATURE OF U. S. MARSHAL OR DEPUTY

11/29/71

12/9/71

5:00 AM

REMARKS

Ref. will return from Calif. late 12/2/71

A-40

U.S. MARSHALS SERVICE INSTRUCTION AND PROCESS RECORD



INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.


PLAINTIFF LEE WOLFMAN		COURT NUMBER 71 CIV 5138
DEFENDANT MORTON P. WEISS, et al		TYPE OF WRIT S/C
SERVE ➔	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN FASHION SEWING GUILD, INC. (a New York corporation)	
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) % Morton P. Weiss, 2357 Lemoine Ave., Fort Lee, N.J.	
AT	SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW: HALPERN & ROTHMAN 605 Third Avenue New York, N.Y. 10016	
		Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. ➔ NO. 6 OF 7 CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included. SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.
SPECIAL INSTRUCTIONS:		

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR Jessel Rothman		TELEPHONE NUMBER 343-0001	DATE 11/24/71
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. ➔ I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	DEPOSIT/CO ---	DIST. OF ORIGIN 54	DISTRICT TO SERVE 50 LOCATION OF SUB-OFFICE OF DIST. TO SERVE
SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK		DATE 11/24/71	
<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.			
<input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.			
NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) thru. son Gary Weiss - auth. to accept.		<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.	
ADDRESS (Complete only if different than shown above)		FEE (If applicable) \$ 4.00	MILEAGE \$ --
DATE(S) OF ENDEAVOR (Use Remarks if necessary) 1/29/71	DATE OF SERVICE 12/9/71	TIME 5:00 AM	SIGNATURE OF U. S. MARSHAL OR DEPUTY
REMARKS ref. will return from Calif. 12/2/71 late			

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF LEE WOLEMEN		COURT NUMBER 71 CIV 5123					
DEFENDANT MORTON P. WEISS 35 31		TYPE OF WRIT 3/2					
SERVE 	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN FASHION SEWING GUILD, INC. (a Delaware Corporation)						
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 3 Morton P. Weiss, 2357 Lemoine Ave., Fort Lee, N.J.						
AT	SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:						
	HALPERN & ROTHMAN 605 Third Avenue New York, N.Y. 10016		Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.  <table border="1"> <tr> <td>NO.</td> <td>TOTAL</td> </tr> <tr> <td>7</td> <td>7</td> </tr> </table>	NO.	TOTAL	7	7
NO.	TOTAL						
7	7						
			CHECK IF APPLICABLE: <input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included. SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.				
SPECIAL INSTRUCTIONS:							

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR Jessel Rothman		TELEPHONE NUMBER 343-0001	DATE 11/24/71
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. 	DEPOSIT/CODE 54	DIST. OF ORIGIN 50	DISTRICT TO SERVE 50
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK		DATE 11/24/71
<input checked="" type="checkbox"/> I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below. <input type="checkbox"/> I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.			
NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above) thru. son Gary Weiss - auth. to accept			<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)			FEE (if applicable) \$4.00
DATE(S) OF ENDEAVOR (Use Remarks if necessary) 11/29/71			MILEAGE \$ --
DATE OF SERVICE 12/9/71	TIME 5:00 PM	SIGNATURE OF U. S. MARSHAL OR DEPUTY	
REMARKS ref. will return from Calif. 12/2/71 late			

ENTERED APR 17 1974

U.S. MARSHALS SERVICE

INSTRUCTION AND PROCESS RECORD

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PLAINTIFF	COURT NUMBER
DEFENDANT	TYPE OF WRIT

SERVE ➔ AT	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
	ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:	Show number of this writ and total number of writs submitted, i.e., 1, 1 of 3, etc.	NO. OF	TOTAL
CHECK IF APPLICABLE:			
<input type="checkbox"/> One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.			
SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.			

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR	TELEPHONE NUMBER	DATE
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SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.	DEPOSIT / CODE	DIST. OF ORIGIN	DISTRICT TO SERVE	LOCATION OF SUB-OFFICE OF DIST. TO SERVE
I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.	SIGNATURE OF AUTHORITY USMS DEPUTY OR CLERK	DATE		

I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS" the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)	<input type="checkbox"/> A person of suitable age and discretion then abiding in the defendant's usual place of abode.
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ADDRESS (Complete only if different than shown above)	FEE (If applicable)	MILEAGE
	\$	\$

DATE(S) OF ENDEAVOR (Use Remarks if necessary)	DATE OF SERVICE	T.M.	AM PM	SIGNATURE OF U. S. MARSHAL OR DEPUTY
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REMARKS

All Processes Accounted For

Initial Deposit:

Cost for Service: 8 3.36

Balance Due:

Please make remittance payable

to U. S. Marshal, SDNY, U. S.

Courthouse, Foley Sq., New York

NY 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LEE WOLFMAN, Individually, and on
behalf of himself and all other
stockholders of INSTITUTE OF PATTERN
DESIGN, INC., TV CONSUMER PRODUCTS
CORP., FASHION SEWING GUILD, INC.
(A NEW YORK CORPORATION), FASHION
SEWING GUILD, INC. (A DELAWARE COR-
PORATION),

No. 71 Civ 5138

Plaintiffs,

NOTICE OF MOTION TO
FILE AND SERVE AMENDED
AND SUPPLEMENTAL SUMMONS
AND COMPLAINT

-against-

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF
PATTERN DESIGN, INC., TV CONSUMER
PRODUCTS CORP., FASHION SEWING GUILD,
INC. (A NEW YORK CORPORATION), FASHION
SEWING GUILD, INC. (A DELAWARE COR-
PORATION) and GOLDEN RULE INTERNATIONAL,
INC., (A New Jersey Corporation)

Defendants.

-----x
TO: LEAVY, SHAW & HORNE
Attorneys for Defendant Weiss
233 Broadway
New York, New York

D'AMATO, COSTELLO & SHEA
Attorney for Defendant Lippman
116 John Street
New York, New York

HON. JOHN M. CANNELLA, J.

PLEASE TAKE NOTICE, that the undersigned upon the affir-
mation of JESSEL ROTHMAN, and the proposed supplemental complaint
will move this Court at Room 1001, United States Courthouse, Foley
Square, City of New York, State of New York, on the 14th day of
November, 1973 at 10:00 o'clock in the forenoon or as soon thereafter
as counsel can be heard for an order pursuant to Rules 15(a) and 19,
F.R.C.P. for leave to file and serve an amended and supplemental
summons and complaint (a copy of which is annexed hereto as Exhibit "A")

by adding an additional party defendant, GOLDEN RULE INTERNATIONAL, INC., together with such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that answering affidavits, if any, must be served upon the undersigned three (3) days before the return day of this motion.

Dated: New York, New York
November 2, 1973

JS
JESSEL ROTHMAN
Attorney for Plaintiffs
Office & P.O. Address
605 Third Avenue
New York, New York 10016
(212) 343-0001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LEE WOLFMAN, Individually, and on behalf
of himself and all other stockholders
of INSTITUTE OF PATTERN DESIGN, INC.,
TV CONSUMER PRODUCTS, INC., FASHION
SEWING GUILD, INC., (A New York Corpor-
ation), FASHION SEWING GUILD (A Delaware
Corporation),

Index No. 71 Civ 5138

Plaintiffs,

-against-

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF
PATTERN DESIGN, TV CONSUMER PRODUCTS
CORP., FASHION SEWING GUILD (A New
York Corporation), FASHION SEWING
GUILD, INC. (A Delaware Corporation)
and GOLDEN RULE INTERNATIONAL, INC.,
(A New Jersey Corporation),

Defendants.
-----x

AFFIDAVIT OF JESSEL ROTHMAN IN SUPPORT
OF MOTION TO FILE AND SERVE AMENDED AND
SUPPLEMENTAL SUMMONS AND COMPLAINT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JESSEL ROTHMAN, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice
before this Court and attorney for the plaintiffs herein. I am
fully familiar with the facts and proceedings heretofore had herein.
I make this affidavit in conjunction with a motion to file and
serve an amended and supplemental summons and complaint pursuant
to Rules 15(a) and 19, F.R.C.P.

2. The defendants, MORTON P. WEISS and SHIRLEY WEISS
(now deceased) are represented by Leavy, Shaw and Horne, and the
defendant NORMAN LIPPMAN is represented by D'AMATO, COSTELLO & SHEA.

3. The plaintiffs' cause of action is one for corporate waste, mis-management and diversion of corporate profits by one of the principal stockholders of the said corporations (MORTON P. WEISS) and his wife, who held stock in his behalf, in conspiracy with their auditor, NORMAN LIPPMAN.

4. One of the specific items of diversion of the corporate profit was in the sale of a home sewing book, GOLDEN RULE BOOK. The rights to that book had been purchased by the plaintiffs corporation's wholly owned subsidiary, FASHION SEWING GUILD, INC. and predicated upon the advertising by the defendants, it appeared that the defendant MORTON P. WEISS was selling this book under the corporate aegis of FASHION SEWING GUILD, INC.

5. It was not until October 16, 1973, less than one month ago when Mr. Lippman testified, that I learned from an authoritative source that Mr. Weiss had had his New Jersey counsel form a New Jersey corporation called GOLDEN RULE INTERNATIONAL, INC. for the purpose of selling the assets which belong to the corporation, to wit, "The Golden Rule Book".

6. It appears that neither Mr. Weiss nor Mr. Lippman could remember if any stock was issued in the GOLDEN RULE INTERNATIONAL, INC. and that this corporation was established as a "dummy" corporation with Mr. Weiss as the principal officer thereof to act as a conduit for the sale of the books.

7. Mr. Lippman conceded that the books purchased by GOLDEN RULE INTERNATIONAL, INC. were purchased under the terms of the contract between the publisher of the book, MODEVERLAG LUTTERLOH and FASHION SEWING GUILD, INC.. This fact came as a complete

surprise to me since nothing in my possession indicated that the defendants, MORTON P. WEISS and NORMAN LIPPMAN had formed a third corporation through which they sought to hide their improper conduct.

8. Mr. Lippman testified that he did not remember a corporate bank account ever being created for FASHION SEWING GUILD, INC. and that all of the sales were conducted through the corporate entity, GOLDEN RULE INTERNATIONAL, INC.. Because GOLDEN RULE INTERNATIONAL, INC. was not a party defendant, neither Mr. Lippman's counsel nor Mr. Weiss' counsel would permit questioning regarding GOLDEN RULE INTERNATIONAL, INC. during the course of an examination before trial and further refused to produce the corporate books and records of GOLDEN RULE INTERNATIONAL, INC. although they are in the possession of Mr. Lippman.

9. It thus became incumbent to file and serve a supplemental summons in order to make GOLDEN RULE INTERNATIONAL, INC. a party to this action and in order to obtain the information required in the course of pre-trial depositions. Annexed hereto and made a part hereof is a proposed supplemental summons and amended complaint. The summons adds a party defendant GOLDEN RULE INTERNATIONAL, INC., a corporation which is controlled by the defendant, MORTON P. WEISS and upon whom service can be easily made, and the complaint is amended in Paragraphs "2", "5" and "19" to incorporate facts with regard to GOLDEN RULE INTERNATIONAL, INC., and the further fact that SHIRLEY WEISS is deceased and no executor or administrator has been appointed even though she does appear by counsel.

10. No prior application for the relief sought has been made to this or any other court.

WHEREFORE, your affiant prays for an order of this Court pursuant to Rules 15(a) and 19 F.R.C.P. for leave to file and serve an amended supplemental summons an. complaint, and for such other and further relief as to this Court may seem just and proper.

14
JESSEL ROTHMAN

Sworn to before me this
2nd day of November, 1973

14
LILLIAN M. DEINER
NOTARY PUBLIC, STATE OF NEW YORK
No. 3-1024400
Qualified in Nassau County
Commission Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEE WOLFMAN, et al.,

Plaintiffs,

-v-

MORTON P. WEISS, et al.,

Defendants.

71 Civ. 5138

REPORT OF
UNITED STATES
MAGISTRATE

TO THE HONORABLE JOHN M. CANNELLA, U.S.D.J.:

This report deals with two motions (as described below) referred by you to me on November 15, 1973, to hear and report.

Motion #1, filed November 9, 1973, is a motion for leave to file and serve an amended and supplemental summons and complaint, in which a new party plaintiff, "Golden Rule International, Inc. (a New Jersey Corporation)" is to be named.

After hearing this motion before me on November 29th, the objections initially interposed to this motion were withdrawn; and I am independently satisfied that the granting of this motion is consistent with the interests of justice. I accordingly recommend that this motion be marked "motion granted on consent, proposed amended complaint to be filed within 20 days from date of this order".

Motion #2, also filed November 9th, is a motion by the plaintiff "to strike demand for interrogatories". Technically, of course, the proper procedure, where interrogatories have been served by a party, is to object to the interrogatories, whereupon the party who has served the interrogatories moves under Federal Rule 37 to compel compliance with the interrogatories. That technical defect, however, is no obstacle to

consideration of the merits of the respective positions taken by the parties respecting the interrogatories.

In the course of the hearing held before me on November 29th, I indicated my recommended rulings with respect to each of the interrogatories, and at the conclusion of the hearing, counsel for the parties indicated ^{their agreement} that the plaintiff's motion be deemed disposed of accordingly.

I indicated that I would recommend that the general objection to the interrogatories, on ground of burdensomeness, should be overruled.

My recommendations concerning the specifically numbered interrogatories were as follows.

#1. There being no specific objection, an answer was directed.

#2. I believe it proper for the defendant Lippman to inquire as to any written or oral contracts between plaintiff Wolfman and the defendants Morton and Shirley Weiss relating to the subject matter of this action. It was agreed by counsel that the substance of any oral agreements would be furnished and that counsel for defendant Lippman may examine the corporate records in possession of the attorney for plaintiff to the extent that those records shed light on the existence of any written agreements.

#3. It was agreed that the corporate books would be made available to counsel for defendant Lippman at the Mineola, New York office of counsel for the plaintiff.

#4. Construing this item as a request for the substance of any written communications between plaintiff and the defendant Lippman between 1969 and the present date relating to the

subject matter in suit, I hold that this is a proper request and would direct that counsel for plaintiff assemble any such documentation as the plaintiff may have and make it available for inspection as stated in item 3.

#5. This inquiry concerning bank accounts, inventory or other assets held by the corporate plaintiffs appears proper to me. If, as claimed, the plaintiff Wolfman and his counsel do not have access to this data, that fact should be stated under oath.

#5(a). The request for production of plaintiff Wolfman's tax returns is plainly irrelevant and should be denied.

#5(b). Plaintiff Wolfman should be required to state any "cash" payments received by him from the corporations named, from September 23, 1970 to date. To the extent that payments were received by check Wolfman may, if so advised, indicate that such check payments can be obtained by examination of financial records presently said to be in the possession of the defendant Weiss.

#5(c). Information concerning the personal bank accounts maintained by plaintiff Wolfman is plainly irrelevant and I would sustain the objection thereto.

#7. The objection to this inquiry should be overruled. The information sought is plainly relevant. The answer may, of course, indicate lack of knowledge (if such be the fact on the part of the plaintiff Wolfman).

#8(a). This information should be supplied to the extent available from the corporate minutes in the possession of the attorney for the plaintiff Wolfman.

Int. #8(b). This information should be furnished to the extent known.

Int. #8(c). The objection should be overruled and an answer supplied.

Int. #8(d). This should be answered to the extent known.

Int. #8(e). No objection having been interposed, an answer should be supplied.

Int. #9. Sub-parts (a), (b) and (c) should be answered, no objection having been interposed.

The objection to sub-part (d) is sustained at this time, without prejudice to renewal, if necessary, following oral deposition of the plaintiff Wolfman.

As to sub-part (e) the objection should be overruled and Wolfman compelled to state when and under what circumstances he first learned of the alleged "conspiracy" mentioned in the complaint.

Int. #10 is plainly relevant and the objection should be overruled.

Int. #11. No objection having been interposed, an answer should be supplied.

Int. #12 seems quite relevant and an answer should be supplied.

Int. #12(1) is, in my view, relevant and an answer should be supplied.

Int. #13 calls for the basis of plaintiff's charge that the defendant Lippman breached his fiduciary obligations and asks for a statement as to any "written matter" relied upon to establish said alleged breach of fiduciary duty.

Int. #13 to #15. No specific objection having been

interposed answers should be supplied.

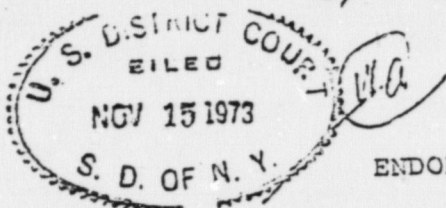
Int. #16. This interrogatory calls upon the plaintiff to specify the damages claimed. The interrogatory is proper except as to the last two sentences therein, as to which objection should be sustained. The balance of the interrogatory should be answered.

As previously indicated, counsel for the parties have stated their acquiescence in the above-mentioned proposed rulings. Accordingly, and with the consent of counsel, it is recommended that the plaintiff's motion "for an order pursuant to Rule 33 F.R.C.P. to strike demand for interrogatories" be disposed of as herein indicated, and that answers be filed within 30 days from date of entry of order on the motion.

The following papers considered by me on these two motions are forwarded herewith:

1. Notice of motion to serve amended complaint filed November 9, 1973.
2. Notice of motion "to strike demand for interrogatories" filed November 9, 1973.
3. Plaintiff's memorandum of law in support of motion to strike demand for interrogatories filed November 9, 1973.
4. Affidavit of Robert E. Meshel filed November 9, 1973 in opposition to motion to amend.
5. Memorandum of law on behalf of defendant Lippman in opposition to motion to amend complaint and in opposition to motion to strike defendant's interrogatories filed November 9, 1973.
6. Reply affirmation of plaintiff's attorney, filed November 13, 1973.

Copies of this report have been mailed to counsel this date.



ENDORSEMENT

71 Civ. 5138

The instant motion for leave to file and serve an amended and supplemental summons and complaint is respectfully referred to Magistrate Harold J. Raby to hear and report, pursuant to Rule 35 of the General Rules of this court.

The court makes this reference in the interests of judicial economy. Magistrate Raby has been previously designated to supervise pre-trial proceedings in this case and has scheduled a pre-trial conference for November 29, 1973. Additionally, the court has also referred a motion involving pre-trial discovery to him. The court is of the opinion that its reference of these motions and other preliminary matters to the Magistrate for a hearing at a time convenient to the parties (November 29, 1973) will serve to expedite the progress of this action.

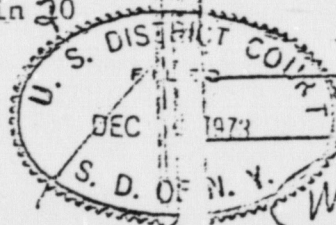
So ordered.

Dated: New York, N.Y.
November 15, 1973

John M. Cannella
U.S.D.J.

Motion granted on consent, proposed amended complaint to be filed within 20 days from entry of this order.

So Ordered.
Dated: 12/3, 1973.



Signature

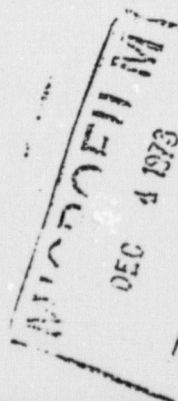
Typed

John M. Cannella
JOHN M. CANNELLA
U.S.D.J.

Index No. 71 Civ 5138
Year 19
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEE WOLFMAN, et al,
Plaintiffs,

-against-
MORTON P. WEISS, et al
Defendants.



NOTICE OF MOTION TO FILE AND
SERVE AMENDED AND SUPPLEMENTAL
SUMMONS AND COMPLAINT

JESSEL ROTHMAN
Attorney for Plaintiff

Office and Post Office Address
605 THIRD AVENUE
NEW YORK, N. Y. 10016
343-0001

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.
19

Dated,

Attorney(s) for

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
LEE WOLFMAN, Individually, and on
behalf of himself and all other
stockholders of INSTITUTE OF PATTERN
DESIGN, INC., TV CONSUMER PRODUCTS
CORP., FASHION SEWING GUILD, INC.
(A NEW YORK CORPORATION), FASHION
SEWING GUILD, INC. (A DELAWARE COR-
PORATION),

Plaintiffs,

-against-

MORTON P. WEISS, SHIRLEY WEISS, NORMAN
LIPPMAN, INSTITUTE OF PATTERN DESIGN, INC.,
TV CONSUMER PRODUCTS CORP., FASHION
SEWING GUILD, INC. (A NEW YORK CORP-
ORATION), FASHION SEWING GUILD, INC. (A
DELAWARE CORPORATION) and GOLDEN RULE
INTERNATIONAL, INC., (A NEW JERSEY
CORPORATION),

Defendants.
-----x

No. 71 Civ 5138

NOTICE OF MOTION FOR
AN ORDER, PURSUANT TO
RULE 26; and RULE
33 of the F.R.C.P.,
et al. TO PERMIT PLAIN-
TIFFS TO FILE THEIR
SUPPLEMENTAL SUMMONS
AND COMPLAINT AND INTER-
ROGATORIES NUNC PRO TUNC,
AND FOR AN ORDER COM-
PELLING NORMAN LIPPMAN
TO HAVE HIS TESTIMONY
TAKEN BY ORAL DEPOSITION.

TO: LEAVY, SHAW & HORNE, Esqs.
Attorneys for Defendants
MORTON P. WEISS & SHIRLEY
WEISS
233 Broadway
New York, New York.

D'AMATO, COSTELLO & SHEA, Esqs.
Attorneys for Defendant NORMAN
LIPPMAN
116 John Street
New York, New York.

HON. HAROLD J. RABY, U. S. MAGISTRATE

PLEASE TAKE NOTICE, that the undersigned upon
the report of the Honorable HAROLD J. RABY, dated November 30, 1973,
the Memorandum Orders of the Hon. JOHN M. CANNELLA, dated December

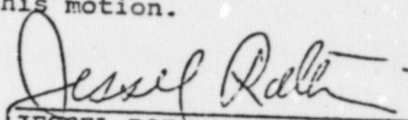
3, 1973, the testimony taken pursuant to Rule 26 F.R.C.P. of NORMAN LIPPMAN, taken on October 16, 1973, the undersigned, will move before the Honorable Magistrate HAROLD J. RABY at the direction of the Hon. JOHN M. CANNIELLA, at Room No. 610, United States Courthouse, Foley Square, City of New York, State of New York, on the 7th day of March, 1974 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order permitting the Plaintiff to file its amended supplemental summons and complaint nunc pro tunc, as of December 23, 1973; and permitting the Plaintiffs to serve its answers to interrogatories pursuant to the report of the Honorable Magistrate HAROLD J. RABY, dated November 30, 1973, nunc pro tunc as of January 2, 1974, and for an order pursuant to Rule 26 F.R.C.P., compelling NORMAN LIPPMAN to have his testimony taken by oral deposition, and compelling said Defendant LIPPMAN to produce at said examination for discovery and reproduction, the following documents:

- (a) - All corporate books, records, and minutes, documents, agreements, and memoranda relating to or pertaining to GOLDEN RULE INTERNATIONAL, INC.; INSTITUTE OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS CORP.; FASHION SEWING GUILD, INC. (Two Corporations); MODEVERLAG LUTTERLOH CORP., BARRY WEISS, PAUL ROBERTS;
- (b) - All documents, records, agreements, memoranda relating to the operation of GOLDEN RULE INTERNATIONAL, INC., including, but not limited to general ledgers, accounts receivable, accounts payable, sales records, cash receipts, cash expenditures, records of salaries paid the officers thereof, including the payments made to NORMAN LIPPMAN;

together with such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that answering affidavits, if any must be served upon the undersigned three (3) days before the return date of this motion.

Dated: New York, New York,
February 13, 1974.


JESSEL ROTHMAN
Attorney for Plaintiffs
Office & P. O. Address
605 Third Avenue
New York, New York 10016
(212) 343-1001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REPORT OF UNITED STATES
MAGISTRATE

LEE WOLFMAN, etc.,

Plaintiffs,

71 Civ. 5138 (JMC)

-7-

MORRIS P. WEISS, et al.,

Defendants.

TO THE HONORABLE JOHN M. CANNELL, U.S.D.J.:

This report relates to a motion by plaintiffs, filed February 21, 1974, and referred by you to me for hearing and report, in which three separate applications are made, consisting as follows:

1. An application for leave to file an amended and supplemental summons and complaint, "nunc pro tunc, as of Dec. 23, 1973";
2. An application for an order permitting plaintiffs to serve their answers to interrogatories "nunc pro tunc as of Jan. 2, 1974";
3. An application under Rule 26 F.R.C.P. to compel NORMAN LIPPMAN, one of the defendants, to answer certain questions heretofore asked at an oral EBT and to produce documents alluded to therein.

The first two branches of the motion are necessitated by the following prior events. By prior orders signed by Your Honor on December 3, 1973 and filed in Court December 4, 1973, you directed (1) that a prior motion by plaintiffs for leave to file their proposed amended and supplemental summons and complaint be granted and that the proposed amended papers be filed "within 20 days from entry of this order", and (2) that, in accordance with my prior recommendation, plaintiffs should file answers to prior interrogatories "within 30 days from the entry of this order". Evidently, however, as indicated in the moving papers, because of an instance of clerical incompetence in the office of plaintiffs' attorney, the content of your orders was not promptly communicated to plaintiffs' attorney, with the result that the latter did not learn of the existence of either of the abovementioned orders until he attempted - after the time to do so had expired - to serve his answers to interrogatories, at which time he was advised by opposing counsel that they had been served too late. Having been so advised and having checked the Court records

and discovered that his time to serve an amended pleading and his time to serve answers to interrogatories had both expired, he filed this motion.

Counsel for the defendants in this case other than Lippman (Messrs. Leavy, Snow & Morse) neither appeared nor submitted any opposing papers on the return day of the motion, March 7th. However, counsel for the defendant Lippman (Messrs. D'Amato, Costello & Sosa) did appear in opposition and filed an opposing affidavit in which, while no objection is made to the application to file the answers to interrogatories late, objection is made to the application to file the amended and supplemental summons and complaint - notwithstanding the fact that, as conceded in the opposing affidavit, the initial application for leave to file such amended pleading, made in November 1973 and granted by you on my recommendation in December 1973, was not opposed.

The sole objection by Lippman's attorney to this portion of the motion is that plaintiffs are now asking for leave to file the pleading "nunc pro tunc", with the possible result - according to Lippman's counsel - that his client's rights, e.g., under the statute of limitations, might somehow be affected.

That contention is, I think, based upon a misreading of the intent of the motion. The use of the term "nunc pro tunc" in the present context is, as I view it, merely a recognition of the fact that your prior order of December 3, 1973 required that the amended pleading in question be filed as of December 23, 1973, and in effect merely constitutes a request for a further extension of time for such filing by reason of the circumstances hereinabove alluded to. The new proposed pleading asserts no new claims against Lippman; and to the extent that it asserts claims against parties not named in the original complaint, such parties would have every right to invoke the statute of limitations, if applicable; and to the extent that any such parties might cross-claim against Lippman, he, too, can presumably invoke the statute of limitations. Certainly the granting of permission to file a supplemental pleading does not constitute an advance adjudication as to the timeliness thereof.

For the reasons just indicated, I am of the opinion that the objections interposed by counsel for defendant Lippman to the plaintiffs' request to file an amended pleading are without substance; and I accordingly recommend that the application to do so be granted. Similarly, I recommend that the application for "nunc pro tunc" service of plaintiffs' answers to Lippman's interrogatories be granted, no reasons having been given for denial of such application.

The third branch of plaintiffs' motion is an application to compel the defendant Lippman, a certified public accountant, to furnish information relating to the financial records of one of Lippman's clients, Golden Rule International, Inc., a company which is named as a party in the proposed supplemental complaint but which, however, is not presently a party of record.

In deference to Mr. Lippman's presumed obligations to his client, and also in recognition of the practicality that once Golden Rule is made a party herein, plaintiffs will thereupon have the right to full examination and inspection of Golden Rule's books and records, I recommend that the motion of plaintiffs, insofar as it relates to testimony of Mr. Lippman concerning the content of those books and records, be denied as wholly unnecessary.

This report is accompanied by a proposed order providing (1) that the application to serve and file a supplemental and amended summons and complaint be granted and that said documents may be filed not later than 20 days from entry of said order; (2) that the application to permit late service of plaintiffs' answers to interrogatories also be granted and that said document may be served not later than 20 days from entry of said order (the answers have in fact already been filed in Court as of February 21, 1974); and (3) that the plaintiffs' motion be denied in all other respects.

Copies of this report have been mailed this date to counsel for the interested parties, who are hereby instructed that any objections to this report must be filed at your chambers not later than ten days from the date hereof. Counsel are further instructed that they must appear at my office for further pretrial conference on April 16, 1974, at 10 a.m.

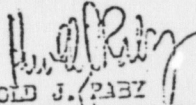
The following papers considered by me on this motion are forwarded herewith:

1. Plaintiffs' motion, filed 2/2/74;
2. Opposing affidavit of R.R. Maschal, sworn to 2/28/74, filed 3/6/74.

The court file, requisitioned by me in connection with my consideration of this motion, has been returned by me this date to the Clerk of the Court.

Dated: March 8, 1974.

Respectfully submitted,


 HAROLD J. RAEY
 UNITED STATES MAGISTRATE

cc: Jassal Rotman, Esq.,
 605 Third Avenue,
 New York, N.Y. 10016

Leavy, Shaw & Horne, Esqs.,
 233 Broadway,
 New York, N.Y.

D'Amato, Costello & Shea, Esqs.,
 116 John Street,
 New York, N.Y. 10038.

LEE WOLFMAN, etc.,

Plaintiffs,

-v-

REPORT OF UNITED STATES
MAGISTRATE

71 Civ. 5138 (JMC)

MORTON P. WEISS, et al.,

Defendants.

TO THE HON. JOHN M. CANNELLA, U.S.D.J.:

This report relates to a motion by plaintiffs, filed February 21, 1974, and referred by you to me for hearing and report, in which three separate applications are made, consisting as follows:

1. An application for leave to file an amended and supplemental summons and complaint, "nunc pro tunc, as of Dec. 23, 1973";
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and discovered that his time to serve an amended pleading and his time to serve answers to interrogatories had both expired, he filed this motion.

Counsel for the defendants in this case other than Lippman (Messrs. Leavy, Shaw & Horne) neither appeared nor submitted any opposing papers on the return day of the motion, March 7th. However, counsel for the defendant Lippman (Messrs. D'Amato, Costello & Shea) did appear in opposition and filed an opposing affidavit in which, while no objection is made to the application to file the answers to interrogatories late, objection is made to the application to file the amended and supplemental summons and complaint -- notwithstanding the fact that, as conceded in the opposing affidavit, the initial application for leave to file such amended pleading, made in November 1973 and granted by you on my recommendation in December 1973, was not opposed.

The sole objection by Lippman's attorney to this portion of the motion is that plaintiffs are now asking for leave to file the pleading "nunc pro tunc", with the possible result -- according to Lippman's counsel -- that his client's rights, e.g., under the statute of limitations, might somehow be affected.

That contention is, I think, based upon a misreading of the intent of the motion. The use of the term "nunc pro tunc" in the present context is, as I view it, merely a recognition of the fact that your prior order of December 3, 1973 required that the amended pleading in question be filed as of December 23, 1973, and in effect merely constitutes a request for a further extension of time for such filing by reason of the circumstances hereinabove alluded to. The new proposed pleading asserts no new claims against Lippman; and to the extent that it asserts claims against parties not named in the original complaint, such parties would have every right to invoke the statute of limitations, if applicable; and to the extent that any such parties might cross-claim against Lippman, he, too, can presumably invoke the statute of limitations. Certainly the granting of permission to file a supplemental pleading does not constitute an advance adjudication as to the timeliness thereof.

For the reasons just indicated, I am of the opinion that the objections interposed by counsel for defendant Lippman to the plaintiffs' request to file an amended pleading are without substance; and I accordingly recommend that the application to do so be granted. Similarly, I recommend that the application for "nunc pro tunc" service of plaintiffs' answers to Lippman's interrogatories be granted, no reasons having been given for denial of such application.

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In deference to Mr. Lippman's presumed obligations to his client, and also in recognition of the practicality that once Golden Rule is made a party herein, plaintiffs will thereupon have the right to full examination and inspection of Golden Rule's books and records, I recommend that the motion of plaintiffs, insofar as it relates to testimony of Mr. Lippman concerning the content of those books and records, be denied as wholly unnecessary.

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Copies of this report have been mailed this date to counsel for the interested parties, who are hereby instructed that any objections to this report must be filed at your chambers not later than ten days from the date hereof. Counsel are further instructed that they must appear at my office for further pretrial conference on April 16, 1974, at 10 a.m.

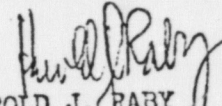
The following papers considered by me on this motion are forwarded herewith:

1. Plaintiffs' motion, filed 2/21/74;
2. Opposing affidavit of R.E. Meshel, sworn to 2/28/74, filed 3/6/74.

The court file, requisitioned by me in connection with my consideration of this motion, has been returned by me this date to the Clerk of the Court.

Dated: March 8, 1974.

Respectfully submitted,


HAROLD J. RABY
UNITED STATES MAGISTRATE

cc: Jessel Rothman, Esq.,
605 Third Avenue,
New York, N.Y. 10016

Leavy, Shaw & Horne, Esqs.,
233 Broadway,
New York, N.Y.

DiAmato, Costello & Shea, Esqs.,
116 John Street,
New York, N.Y. 10038.

United States District Court

FOR THE

SOUTHERN DISTRICT

71 Civ 5138

CIVIL ACTION FILE NO.

LEE WOLFMAN, Individually, and on behalf
of himself and all other stockholders of
INSTITUTE OF PATTERN DESIGN, INC., TV
CONSUMER PRODUCTS, INC., FASHION SEWING
GUILD, INC. (A NEW YORK CORPORATION)
FASHION SEWING GUILD, INC., (A DELAWARE
CORPORATION),

Plaintiff s

v.

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF PATTERN
DESIGN, INC., TV CONSUMER PRODUCTS
CORP., FASHION SEWING GUILD, INC.
(A NEW YORK CORPORATION), FASHION
SEWING GUILD (A DELAWARE CORPORATION)
and GOLDEN RULE INTERNATIONAL, INC.
(A NEW JERSEY CORPORATION),

Defendant s

SUPPLEMENTAL
SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

JESSEL ROTHMAN, ESQ.
605 Third Avenue
New York, New York, 10016

plaintiff's attorney , ~~whose address is~~

an answer to the complaint which is herewith served upon you, within twenty days after service
of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default
will be taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date: October 30, 1973

[Seal of Court]

-X-

LEE WOLFMAN, Individually, and
on behalf of himself and all
other stockholders of INSTITUTE
OF PATTERN DESIGN, INC., TV
CONSUMER PRODUCTS, CORP., FASHION SEWING
GUILD, INC. (A NEW YORK CORPORATION),
FASHION SEWING GUILD, INC. (A DELAWARE
CORPORATION),

Plaintiffs,

-against-

CIVIL # 71 Civ 5138

SUPPLEMENTAL & AMENDED
COMPLAINT

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF
PATTERN DESIGN, INC., TV CONSUMER
PRODUCTS CORP., FASHION SEWING GUILD,
INC. (A NEW YORK CORPORATION),
FASHION SEWING GUILD, INC. (A DELAWARE
CORPORATION) and GOLDEN RULE INTERNATIONAL,
INC. (A NEW JERSEY CORPORATION),

Defendants.

-X-

The plaintiff, individually, and as a shareholder
of TV CONSUMER PRODUCTS CORP., INSTITUTE OF PATTERN DESIGN,
INC., FASHION SEWING GUILD, INC. (a New York corporation)
and FASHION SEWING GUILD, Inc. (a Delaware corporation) suing
on behalf of himself individually, and all other shareholders
of TV CONSUMER PRODUCTS CORP., INSTITUTE OF PATTERN DESIGN,
INC. and FASHION SEWING GUILD, INC. (a New York corporation)
and FASHION SEWING GUILD, INC. (a Delaware corporation),
similarly situated, and in the name of TV CONSUMER PRODUCTS
CORP., INSTITUTE OF PATTERN DESIGN, INC., and FASHION SEWING
GUILD, INC. (a New York corporation) and FASHION SEWING GUILD,
INC. (a Delaware corporation) to procure judgment in its favor,
complains of the defendant and alleges:

1. INSTITUTE OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS CORP. and FASHION SEWING GUILD, INC. (a Delaware corporation) are corporations organized and existing under the laws of the State of Delaware.

2(a). FASHION SEWING GUILD, INC. (a New York corporation) is a corporation organized and existing under the laws of the State of New York.

(b). GOLDEN RULE INTERNATIONAL, INC., (a New Jersey corporation) is a corporation organized and existing under the laws of the State of New Jersey and is controlled by the defendants, MORTON P. WEISS and NORMAN LIPPMAN.

3. NORMAN LIPPMAN is a citizen of the State of New York.

4. LEE WOLFMAN is a citizen of the State of New Jersey.

5. MORTON P. WEISS and SHIRLEY WEISS, are husband and wife, and upon information and belief are citizens of the State of New Jersey. SHIRLEY WEISS is now deceased and upon information and belief no executor or administrator has been appointed.

6. That at all times hereinafter mentioned the plaintiff LEE WOLFMAN has been and still is the actual owner and holder of record of fifty (50%) per cent of the issued and outstanding shares of common stock of the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS CORP.

7. On information and belief, at all times hereinafter mentioned, MORTON P. WEISS has been and still is the actual owner (although SHIRLEY WEISS may be the holder of record) of fifty (50%) of all the issued and outstanding shares of stock of the defendant, TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC.

8. That INSTITUTE OF PATTERN DESIGN, INC. is the owner of all the issued and outstanding shares of stock of MAGIC SEAMSTRESS COMPANY, FASHION SEWING GUILD, INC. (a New York corporation, FASHION SEWING GUILD, INC. (a Delaware corporation), NWSR, INC. and SRLW-TV, INC.

9. NORMAN LIPPMAN has acted as auditor and accountant for all of the aforementioned corporations and as agent for the corporations as hereinafter set forth.

10. The matters in controversy exceed, in excess of interest and cost, the sum of \$10,000.00.

11. That the plaintiff brings this action on behalf of himself individually and on behalf of all stockholders of the defendant corporations similarly situated.

12. The plaintiff is, and was, at the time of the transactions hereinafter complained of, a 50% stockholder of the defendant corporation and he does adequately and fully represent the interest of such shareholders similarly situated in enforcing the rights of the defendant corporations in the transactions hereinafter alleged.

13. That the directors of TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC. and of all wholly-owned subsidiaries, are MORTON P. WEISS, SHIRLEY WEISS, LEE WOLFMAN and MARY LOU WOLFMAN.

14. That the officers of TV CONSUMER PRODUCTS CORP. and INSTITUTE OF PATTERN DESIGN, INC. are MORTON P. WEISS, President and LEE WOLFMAN, Secretary-Treasurer, but MORTON P. WEISS is the chief operating officer.

15. That plaintiff has neither demanded nor requested before the commencement of this action the defendant corporation through its officers, board of directors, or stockholders that it commence an action against the individual defendants for the wrongful acts committed by them for the reason that the defendants are 50% stockholders, represent 50% of the board of directors, and are, in fact, the operational heads of said corporations and in control thereof and that it would be futile and unavailing to demand that they would cause an action to be brought against themselves which, if successful, would result in judgments against themselves.

16. This action is not a collusive one to confer on a court of the United States jurisdiction over any action over which it would not otherwise have jurisdiction.

17. That since September 23, 1970, to date, MORTON P. WEISS, SHIRLEY WEISS and NORMAN LIPPMAN and other persons unknown have entered into a conspiracy for the benefit, directly or indirectly, of themselves, to waste and divert the assets of TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN, INC.

18. The acts and transactions hereinafter alleged, which were committed to the detriment of the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS CORP. were all committed in pursuance and furtherance of said conspiracy and, upon information and belief, were committed or agreed to among the conspirators in the State of New York.

19. With regard to the INSTITUTE OF PATTERN DESIGN, INC.:

(a) The INSTITUTE OF PATTERN DESIGN, INC. distributes and sells through a staff of salesmen a pattern fitting and cutting manual known as the "Dot Pattern Kit" pursuant to a sole distributorship from Dot Pattern Publishing Company.

(b) That in December, 1970, the board of directors of the INSTITUTE OF PATTERN DESIGN, INC. authorized the formation of two (2) corporations, both called FASHION SEWING GUILD, INC., one to be incorporated in the State of

New York, and the other in the State of Delaware, respectively, said corporations to enter into an agreement with Modeverlag Lutterloh, publishers of a competitive manual or kit known as "The Golden Rule Book".

(c) That the corporation authorized, NORMAN LIPPMAN, the defendant herein, to negotiate a contract for distributing said book in those states where Modeverlag Lutterloh did not have exclusive dealership.

(d) In furtherance of said conspiracy, the defendant, NORMAN LIPPMAN entered into said sole distributorship agreement with Modeverlag Lutterloh in his own name instead of the corporate name and the defendants, MORTON P. WEISS, SHIRLEY WEISS, and NORMAN LIPPMAN then proceeded to cause corporate monies to be used to purchase "The Golden Rule Book" and to divert the profits from the sale of said "The Golden Rule Book" to their own personal uses and not for the corporate purposes of the Institute of Pattern Design, Inc.

(e) Upon information and belief, in furtherance of said conspiracy, the defendants MORTON P. WEISS and NORMAN LIPPMAN caused a corporation to be formed in the State of New Jersey, GOLDEN RULE INTERNATIONAL, INC., in which no stock was issued but was controlled by said defendants.

(f) Upon information and belief, the said defendants caused the books referred to in Paragraph 19(a) of the complaint to be sold under the corporate name, GOLDEN RULE INTERNATIONAL, INC.

(g) Upon information and belief, notwithstanding the fact that the proceeds of the sale of "The Golden Rule Book" were being

deposited in a bank account maintained in the name of GOLDEN RULE INTERNATIONAL, INC., the defendants, in furtherance of said conspiracy, held out to the public in its advertising that the books were being sold by FASHION SEWING GUILD, INC.

(h) That said defendants have used the corporate name and organization, GOLDEN RULE INTERNATIONAL, INC. for the purpose of implementing sales of "The Golden Rule Book" to the detriment of the sale of "Dot Pattern Kit".

(i) Upon information and belief, the defendants and each of them caused the salesmen of the INSTITUTE OF PATTERN DESIGN, INC. to cease selling the "Dot Pattern Book" and to commence selling "The Golden Rule Book" as employees of GOLDEN RULE INTERNATIONAL, INC. diverting all monies due to the INSTITUTE OF PATTERN DESIGN, INC. to either their own personal account, or the account of GOLDEN RULE INTERNATIONAL, INC.

(j) Upon information and belief, the defendants caused the inventory and assets of INSTITUTE OF PATTERN DESIGN, INC. to be sold to persons unknown and diverted the monies therein received for their own personal gain.

(k) Upon information and belief, MORTON P. WEISS and SHIRLEY WEISS, his wife, charged personal expenses to the corporation and diverted the proceeds thereof for their own personal gain.

(l) Upon information and belief, all the defendants above-named violated their fiduciary obligations to the defendant

corporations by failing to promote the sale of MAGIC SEAMSTRESS and the "Dot Pattern Book" and by diverting sales to "The Golden Rule Book", the proceeds of which were pocketed individually or deposited in the name of FASHION SEWING GUILD, INC. or GOLDEN RULE INTERNATIONAL, INC.

() All of said acts and omissions constitute a violation of the fiduciary obligation owed by the said individual defendants as officers, directors, agents and auditors of the Corporation under State statutes and common law.

20. While the individual defendants here were officers, directors, agents and auditors of INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC. and all wholly-owned subsidiary corporations, and were thus charged with the duties of such position, they, and each of them, wrongfully failed to perform such duties as such, and, on the contrary, each was so negligent and careless that the funds and the property of TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN, INC. were squandered, grossly mismanaged, and wasted and the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC. thereby suffered great loss and the value of the shares of the plaintiff were greatly impaired and reduced thereby and the plaintiff also lost much gain it would have received had the individual defendants herein performed the individual duties which it was incumbent on them to perform. Solely by reason of the said wasting of assets by the individual defendants and solely by reason of the gross mismanagement of the affairs

of the corporation by the individual defendants and solely by reason of the said misconduct and breach of duty by the individual defendants as directors, officers and agents of TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN, INC., the said corporations have suffered losses of upward of \$200,000., for which the individual defendants should by proper decree of this court be compelled to account and make restitution to the INSTITUTE OF PATTERN DESIGN, INC. and TV CONSUMER PRODUCTS, INC.

(22) The plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs demand judgment:

a) That the plaintiff, INSTITUTE OF PATTERN DESIGN, INC., be adjudged to be the lawful owner and holder of all the issued and outstanding shares of common stock of FASHION SEWING GUILD, INC. (a New York corporation) and FASHION SEWING GUILD, INC. (a Delaware corporation).

b) That FASHION SEWING GUILD, INC. be directed to transfer its stock to the INSTITUTE OF PATTERN DESIGN, INC. in such manner as required by the laws of the State of New York and Delaware and to deliver to the said corporation a new certificate of stock in due and proper form.

(c) Requiring the defendants, MORTON P. WEISS and NORMAN LIPPMAN to account to the plaintiffs for their acts and conduct described in the complaint, and the acts and conduct of GOLDEN RULE INTERNATIONAL, INC.

(d) Requiring the said defendants, MORTON P. WEISS, NORMAN LIPPMAN and GOLDEN RULE INTERNATIONAL, INC., jointly and severally, to pay over to the plaintiff corporations any losses that may have been found as a result of said accounting to have been sustained by TV CONSUMER PRODUCTS, INC. and INSTITUTE OF PATTERN DESIGN. INC. and any profits that may be found on said accounts to have been received by the defendants MORTON P. WEISS, NORMAN LIPPMAN and GOLDEN RULE INTERNATIONAL, INC.

(e) Granting such other and further relief as to this Court may seem just and proper.

(f) Awarding to the plaintiffs the costs and disbursements of this action together with counsel fees and accounting fees.

Dated: New York, New York
November 2, 1973

JESSEL ROTHMAN
Attorney for Plaintiffs
Office & P.O. Address
605 Third Avenue
New York, New York 10016
(212) 343-0001

MEMO ENDORSED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEE WOLFMAN, et al.,

Plaintiffs, :

-v-

MORTON P. WEISS, et al.,

Defendants. :

FILED
AUG 6 1974
REPORT OF
UNITED STATES
MAGISTRATE

ORDER OF THE COURT
71 Civ. 5138 (JMC)

MICROFILM

AUG 6 1974

TO THE HONORABLE JOHN M. CANNELLA, U.S.D.J.:

This report relates to the below-listed motions:

1. A motion by plaintiffs, filed May 20, 1974, under Rule 26(c) F.R.C.P., for a protective order debarring the defendant Lippman from proceeding with an oral deposition of plaintiffs;
2. A motion by plaintiffs filed June 4, 1974 for an order under Rule 37 F.R.C.P. granting default judgment against defendant Golden Rule International, Inc., or in the alternative compelling production of the books and records of said defendant (which are alleged to be in the physical possession of another defendant, Lippman).

Both of these motions were referred by you to me for hearing and report on June 12, 1974.

I scheduled oral argument on these motions for July 25, 1974, at which time counsel for the plaintiffs appeared as well as counsel for the defendant Weiss.* Counsel for the defendant Lippman had heretofore, as of June 12, 1974 filed an affidavit in opposition to motion #1; but failed to appear for the scheduled argument.

My recommended dispositions of these two motions are as follows.

* The latter attorney also represents Golden Rule International, Inc.

Motion #1 should plainly be denied since it is apparently predicated upon the proposition that a party who has previously served written interrogatories is not entitled thereafter to conduct an oral deposition of the same party. Since there is no basis in law for such a proposition, the plaintiffs' motion to debar the proposed deposition of plaintiffs - predicated as aforesaid on the fact that plaintiffs have already answered written interrogatories - must be denied.

Motion #2 represents a continuation of the efforts by plaintiffs' counsel to obtain access to the corporate books and records of the defendant Golden Rule. Counsel for plaintiffs first attempted to obtain those records from Golden Rule's accountant, the defendant Lippman, who refused to produce the records on the ground that he had no authority to do so, since they were not his records, but those of Golden Rule. Accordingly, counsel for the plaintiffs obtained permission from this Court to file a supplemental summons and complaint naming Golden Rule as an additional defendant. Mitchell Horne, Esq. agreed, at a conference before me on April 16, 1974, to accept service of process against Golden Rule and to answer the complaint by April 30th. However, inasmuch as he neglected to file an answer, counsel for the plaintiffs now ask this Court for default judgment.

The granting of default judgment is wholly unnecessary, inasmuch as the sole purpose of naming Golden Rule as a defendant was to enable examination of its books and records. This was plainly recognized, in the hearing before me, by counsel for the plaintiffs, who,

in open court, thereupon consented to an arrangement under which it was agreed that the defendant Golden Rule shall be deemed to have filed an answer, the contents of which are identical to the answer of the defendant Morton P. Weiss. Insofar as Golden Rule's records are concerned, Mr. Horne, as attorney for Golden Rule, has agreed in open court to make those records available.

Since it further appears that the defendant Lippman has disclaimed any control over the records (notwithstanding that they may possibly be in his physical possession at the present as former accountant for Golden Rule), I assume that Mr. Horne will have no difficulty in obtaining possession of the records of his client, Golden Rule, to the end that those records can thereupon be exhibited to counsel for the plaintiffs. To insure against any such difficulty, I would direct, subject to your confirmation of this report, that the defendant Lippman and his attorney cooperate fully with Mr. Horne in making said records available to counsel for the plaintiffs. Said records should be available for examination by plaintiffs' counsel at Mr. Horne's office on August 15, 1974 or at such other time as may be mutually agreeable.

By way of recapitulation it is hereby recommended that the plaintiffs' motion for a protective order filed May 20, 1974 be denied in all respects; and that the plaintiffs' motion under Rule 37 filed June 4, 1974 be granted to the extent of requiring the production by Mitchell Horne, Esq., attorney for defendant Golden Rule of the books and records of that corporation, at his office, for inspection by counsel for the plaintiffs.

Copies of this report have been mailed this date to counsel for the interested parties who are hereby directed that any objections thereto must be filed at your Chambers within ten days.

The following papers considered by me on this matter are forwarded to you herewith:

1. Plaintiffs' notice of motion for protective order filed May 20, 1974;
2. Plaintiff's motion for default judgment filed June 4, 1974;
3. Affidavit of Robert E. Meshel in opposition filed June 12, 1974;
4. Affidavit of Mitchell J. Horne in opposition filed June 12, 1974.

Dated: New York, N.Y.
July 26, 1974.

cc: Jessel Rothman, Esq.
D'Amato, Costello &
Shea, Esqs.
Mitchell Jon Horne, Esq.

Respectfully submitted,

H. M. P.
HAROLD M. PEARCE
UNITED STATES MAGISTRATE

No objection having been made within the ten day period specified by the Magistrate, the foregoing report is hereby approved and it is

accordingly

SO ORDERED.

August 6
Dated: *August 6*, 1974.

J. M. Cannella
JOHN M. CANNELLA
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LEE WOLFMAN, individually and on
behalf of himself and all other
stockholders of INSTITUTE OF PATTERN
DESIGN, INC., TV CONSUMER PRODUCTS,
CORP., FASHION SEWING GUILD, INC.
(a New York Corporation) FASHION
SEWING GUILD, INC., (a Delaware
Corporation),

71 Civ. 5138

Plaintiffs,

-against-

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF
PATTERN DESIGN, INC., TV CONSUMER
PRODUCTS CORP., FASHION SEWING
GUILD, INC., (a New York Corporation)
FASHION SEWING GUILD, INC., (a
Delaware Corporation) and GOLDEN
RULE INTERNATIONAL, INC., (a New
Jersey Corporation),

ANSWER

Defendants.

-----X
The Defendant, Norman Lippman, by and through his
attorneys, D'Amato, Costello & Shea, as and for his Answer to
the Supplemental and Amended Complaint of the Plaintiffs, alleges
upon information and belief, as follows:

1. Denies any knowledge or information sufficient to
form a belief with regard to each and every allegation contained
in paragraphs "1", "2", "4", "5", "6", "7", "8", "9", "13", "14", &
"15" of the Supplemental and Amended Complaint.
2. Denies each and every allegation contained in
paragraphs "10", "11", "12", "16", "17", "18", "20", "21", and
"22" of the Supplemental and Amended Complaint.
3. Denies that there was any conspiracy or that the
Defendant Norman Lippman entered into a distributorship agree-
ment with Modeverlag Lutterloh in his own name, instead of the
corporate name, and that the Defendant Norman Lippman proceeded to
cause corporate monies to be used to purchase the "Golden Rule

Book" to divert the profits from the sale of said "The Golden Rule Book" to his own personal use or that the Defendant Norman Lippman caused a corporation to be formed in the State of New Jersey called GOLDEN RULE INTERNATIONAL, INC., or that Defendant Norman Lippman controlled issuance of any stock of that entity, or that the Defendant Norman Lippman had caused the books referred to in paragraph "19A" of the Supplemental and Amended Complaint to be sold under the corporate name "GOLDEN RULE INTERNATIONAL INC.", or that the Defendant Norman Lippman caused the inventory and assets of INSTITUTE OF PATTERN DESIGN, INC., to be sold to persons unknown and diverted the monies to his own personal gain or that Defendant Norman Lipman ever violated fiduciary obligation to the Defendant Corporations, and except as so denied, denies any knowledge or information sufficient to form a belief with regard to each and every remaining allegation contained in paragraph "19" of the Supplemental and Amended Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

A. The Supplemental and Amended Complaint fails, as a matter of law, to state any grounds upon which relief can and/or should be granted by this Court and fails to state a cause of action as against the Defendant Norman Lippman, and as a consequence of the foregoing, the Supplemental and Amended Complaint should be dismissed in all respects.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

B. Any claims or allegations or causes of action etc. alleged in the Supplemental and Amended Complaint are barred by the applicable Statute of Limitations and/or the equitable Doctrine of Laches, and as a consequence of the foregoing, the

Supplemental and Amended Complaint should be dismissed in all respects.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

C. If any damages were sustained by any of the Plaintiffs, which allegation is expressly denied, then all such damages will have been caused, brought about, in whole and material part by the affirmative wrong-doing, negligence, breach of fiduciary obligations, fraud, self-dealing, collusion, conspiracy, etc., of the individual Plaintiff-Lee Wolfman and the corporate Plaintiffs, without any similar acts of the Defendant-Norman Lippman contributing thereto, and as a consequence of the foregoing, the Supplemental and Amended Complaint should be dismissed in all respects.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

D. The Plaintiff Lee Wolfman lacks standing, as a matter of law to institute the instant claim and as a consequence of the foregoing, the Supplemental and Amended Complaint should be dismissed in all respects.

AS AND FOR A COUNTER-CLAIM AS
AGAINST THE PLAINTIFFS BY THE
DEFENDANT NORMAN LIPPMAN

1. The Defendant Norman Lippman was, during the times in suit, an individual engaged in the practice of accountancy, and was during all material times, a partner in the firm of Lippman and Linderman, performed various accounting services to the public.

2. Upon information and belief, the Plaintiff Lee Wolfman, was a citizen of the State of New Jersey and was at all material times a corporate officer in the Plaintiff corporations.

3. The salient allegations of the Plaintiffs' Supplemental and Amended Complaint were and are without just cause, without probable cause, without basis in law and fact, and the Plaintiff Lee Wolfman knows them to be without just cause and without probable cause, and are solely out of his vicious and malicious purpose of injuring and damaging the Defendant Norman Lippman and the Plaintiff has maliciously and wantonly used legal process in the institution of a suit as against the Defendant Norman Lippman in the captioned action.

4. That as a consequence of the Plaintiff's wrong-doing the Defendant Norman Lippman has suffered considerable mental anguish and his character and reputation have been impuned in his professional community.

5. That in addition to the foregoing, the Defendant Norman Lippman has been caused to expend and will be caused to expend considerable time and expense in the defense of the aforementioned action and has suffered and will continue to suffer damages in the amount of \$500,000.

WHEREFOR, the Defendant Norman Lippman demands judgment in his counter-claim as against the Plaintiff Lee Wolfman and the individual corporate defendants together with costs, disbursements and attorney's fees.

Dated: New York, New York
August 26th 1974

D'AMATO, COSTELLO & SHEA

By: 

A Member of the Firm
Attorneys for Defendant
Norman Lippman
Office & P. O. Address
116 John Street
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LEE WOLFMAN, individually, and on
behalf of himself and all other
stockholders of INSTITUTE OF
PATTERN DESIGN, INC., TV
CONSUMER PRODUCTS, CORP.,
FASHION SEWING GUILD, INC.
(a New York corporation), FASHION
SEWING GUILD, INC. (a Delaware
corporation),

Plaintiffs,

-against-

71 Ci . 5138 (JMC)

MORTON P. WEISS, SHIRLEY WEISS,
NORMAN LIPPMAN, INSTITUTE OF
PATTERN DESIGN, INC., TV. CONSUMER
PRODUCTS CORP., FASHING SEWING
GUILD, INC. (a New York corporation)
FASHION SEWING GUILD, INC. (a
Delaware corporation) and GOLDEN
RULE INTERNATIONAL, INC., (a
New Jersey corporation),

Defendants.

-----X

MOTION

The plaintiffs' by their attorney, JESSEL ROTHMAN,
move this Honorable Court at Room 10001, United States
Courthouse, Foley Square, City, County and State of New York
on the 21st day of May, 1975, at 10:00 in the forenoon of that
day or as soon thereafter as counsel can be heard for an order

pursuant to Rule 12 of the FRCP striking the affirmative defenses raised by each of the defendants as follows:

With regard to Defendant NORMAN LIPPMAN's amended answer, affirmative defenses nos. 1, 2, 3 and 4 are insufficient in law and are a sham.

With regard to defendant WEISS and GOLDEN RULE INTERNATIONAL, INC.'S first separate defense and counterclaim, paragraphs "1" through "15" (a-k) are insufficient in law and are a sham.

PLEASE TAKE NOTICE that answering affidavits, if any, must be served upon the undersigned at least 3 days before the return date hereof.

Dated: New York, New York
May 7, 1975

Yours, etc.

JESSEL ROTHMAN
Attorneys for Plaintiffs
Office & P. O. Address
605 Third Avenue
New York, New York 10016
(212) 343-0001

TO: D'AMATO, COSTELLO & SHEA
Attorneys for Defendant NORMAN LIPPMAN
116 John Street
New York, New York 10038

MITCHELL J. HORNE, ESQ.
450 Seventh Avenue
New York, New York 10001

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

LEE WOLFMAN, et. al.,	:	
	:	Index No.
Plaintiff,	:	71 Civ. 5138
	:	(JMC)
-against-	:	
	:	
MORTON P. WEISS, et. al.,	:	
	:	STIPULATION AND
Defendants.	:	<u>ORDER</u>

-----X

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties that the Defendants' time to Answer, Plead, appear, or in respect to Plaintiff's Motion to strike certain Affirmative Defenses, or otherwise Move, is extended from May 22, 1975 up to and including June 18, 1975.

Answering Papers will be served on Plaintiff five days before the return date.

JESSEL ROTHMAN, ESQ.

BY: Jessel Rothman
Attorney for Plaintiff
Office and P.O. Address
605 3rd Avenue
New York, New York 10016
(212) 343-0001

D'AMATO, COSTELLO & SHEA

BY:

Richard C. Shea

A Member of the Firm
Attorneys for Defendants
Office and P.O. Address
116 John Street
New York, New York 10038

SO ORDERED:

U.S.D.J.

MINEOLA OFFICE
170 OLD COUNTRY ROAD
MINEOLA, NEW YORK
(516) 294-9449

JESSEL ROTHMAN
ATTORNEY AT LAW

605 Third Avenue, New York, N.Y. 10016

(212) 343-0001

June 26, 1975

Honorable John M. Canella
United States District Court
United States Courthouse
Foley Square
New York, New York 10007

RE: Wolfman v. Weiss, et al
71 Civ. 5138 (JMC.)

Honorable Sir:

On May 7, 1975, I moved to strike the affirmative defenses and answers of the defendants herein. Said motion was originally returnable on May 22, 1975 with opposing papers, if any, to be served on me by May 17, 1975.

On May 21, 1975 I received a call from Mr. Arnoff from the firm of D'Amato, Costello & Shea, attorneys for Mr. Lippman, asking for the courtesy of a two weeks adjournment in which to file opposing papers and that they would have the papers in my hand by June 13, 1975.

It is now June 26, 1975 and I have not received any papers from said firm. The request for an adjournment was not made by Mitchell Horne, the attorney for all of the co-defendants. I continued to telephone Mr. Arnoff from the office of D'Amato, Costello & Shea to determine what his position was since I have been on trial in Monticello during the week of June 18, 1975. I spoke to Mr. Arnoff on Friday, June 20, 1975. He affirmed that he had not sent any papers; that he was making a cross-motion. He refused to tell me when I might receive the opposing papers and he refused to tell me when I might receive the aforementioned cross-motion.

JESSEL ROTHMAN
ATTORNEY AT LAW

-2-

June 26, 1975
Hon. John M. Canella

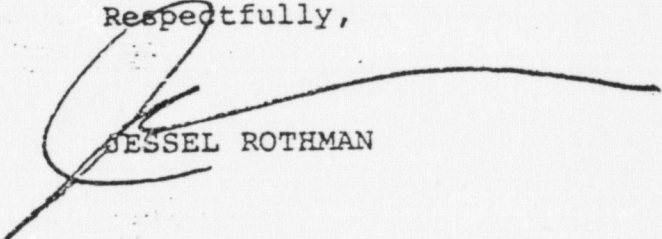
This case has been marked ready for trial. I was advised that the trial was delayed at the request of Mr. Lippman's attorney because Mr. Lippman's son was extremely ill.

The result of this application for adjournment was a delay of trial and because a pre-trial order has not been filed and there is a dispute as to what there is that is relevant in a shareholders derivative action, I felt the only way to resolve all issues was to move to strike the affirmative defenses and answers.

It is my opinion that said defenses have no merit and if they can be eliminated from the proceedings, the trial herein will take at most 3 days.

I, therefore, respectfully request that the motion be marked granted on default against all of the defendants and the matter be sent down for inquiry.

Respectfully,



JESSEL ROTHMAN

JR/al

CC: Mitchell Horne
Norman Arnoff

RECEIVED JUL 21 1975

RECEIVED JUL 21 1975

LAW OFFICES
OF
D'AMATO, COSTELLO & SHEA
116 JOHN STREET
NEW YORK, N.Y. 10038

JOSEPH M. COSTELLO
GEORGE G. D'AMATO
MORTIMER C. SHEA
RICHARD G. MCGAHREN
ROBERT E. MESHEL
ROBERT GILROY

TELEPHONE 212/791-1500
CABLE ADDRESS
DAMCOSH
TELEX 420 151 DCOS UI
WRITER'S DIRECT DIAL NUMBER
791 -1521

NORMAN B. ARNOFF
PAUL BONSIGNORE
RICHARD C. BROWNE
ANTHONY A. MADISON
JEFFREY S. RICHMAN
PAUL S. ROSENST
PETER J. THUMSER
MICHAEL T. WOLIN

July 17, 1975

Honorable John M. Cannella
United States District Court
United States Courthouse
Foley Square
New York, New York 10007

Re: Wolfman v. Weiss, et. al.
71 Civ. 5138 (JMC)
Our File No. 14672

Dear Judge Cannella:

The undersigned is aware that on or about May 7, 1975 the plaintiff moved to strike certain affirmative defenses contained in the answers of the defendants in the above-captioned action. To date the defendants have not served reply papers in connection with this motion. However, I should point out that this motion to strike the affirmative defenses of the defendants was made at the eve of trial and after the completion of discovery in this action. Additionally, the motion attempts to preclude the proof that the defendants will introduce at time of trial and thereby preclude the Court from assessing the full facts in this case. It should also be pointed out, that under any conceivable alignment of the parties in this stockholder's derivative suit no Federal Diversity Jurisdiction exists and that this Court is completely without power to hear the matter.

In view of the above we have advised Mr. Danilow, your law clerk, of this and he has arranged for a conference to be held on July 23, 1975 at 9:30 a.m. We have notified

Honorable John M. Cannella
United States District Court
United States Court House

-2-

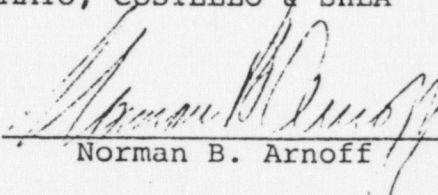
July 17, 1975

counsel for the other parties in the action and in accordance with the instructions of Mr. Danilow have prepared a memorandum of law substantiating our contention that Federal diversity Jurisdiction does not exist. It is our belief that this matter can be resolved without trial when both the Court and the parties in the action are made aware of the fact that the Court is without power to hear the case.

Thank you.

Very truly yours,

D'AMATO, COSTELLO & SHEA

By: 
Norman B. Arnoff

NBA: sbm

cc: Jessel Rothman, Esq.
605 3rd Avenue
New York, New York 10016

Mitchell Horn, Esq.
450 7th Avenue
New York, New York

1 eobr

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- X

5 LEE WOLFMAN, etc., :

6 Plaintiffs, :

7 -against- 71 Civ. 5138

8 MORTON P. WEISS, et al., :

9 Defendants. :

10 ----- X

11
12 Before

13 HON. JOHN M. CANNELLA,
14 District Judge

15 New York, July 25, 1975
16 Room 906 - 9:30 a.m.

17 APPEARANCES:

18 HALPER & ROTHMAN, Esqs.,
19 Attorneys for Plaintiffs
20 By: Jessie Rothman, Esq., of Counsel

21 NORMAN ARNOFF, Esq.,
22 Attorney for Defendant.
23
24
25

21 - - -

1 eobr

2

2 (In open court.)

3 (Case called.)

4 MR. ROTHMAN: This is a motion. I am ready
5 to oppose the motion.

6 MR. ARNOFF: Yes, your Honor.

7 THE COURT: I will hear the opposition. I don't
8 need to hear the proponent.

9 I don't see under any possible stand that there
10 is diversity jurisdiction.

11 MR. ROTHMAN: There is no problem since the
12 opposing party created a misstatement of fact.

13 Let me explain why this Court has jurisdiction.

14 THE COURT: Go ahead.

15 MR. ROTHMAN: The key date is November 24th,
16 1971. I have given your secretary and if your Honor would
17 do me the courtesy of looking at the exhibit, can we have
18 the exhibit, please, which is attached, that will explain
19 the whole situation because it is binding upon Mr. Lippman,
20 the moving defendant. Your Honor, the exhibit I am going
21 to show you is a letter addressed to me from the firm of
22 Eckhaus, Gustave & Hoffman, dated December 3, 1971.
23 There is attached to that letter a note from Norman Lippman,
24 the moving defendant, and a TRS form 433 AB.

25 Now, if your Honor would look at that form

1 eobr

3

2 it says "1. Taxpayers named and address."

3 It says, "Institute of Pattern Design, Inc., no
4 address."

5 "If business, show address, employer, identification
6 number."

7 It again shows the name "Institute of Pattern Design,
8 Inc." and an identification number and no address.

9 Box 5 it says, "Business phone: Discontinued."

10 Box 27 it says, "Net income for the past two years."
11 Mr. Lippman has typed in "3-31-71 and put "None."

12 If you look at the back of that form under the
13 caption "36: Additional information: it says, "Present
14 condition of the company is insolvent, inactive." Signature
15 Norman P. Weiss.

16 That document, which was typed by the defendant
17 Lippman, tells us that as of 3-31-71 we are dealing with
18 an "insolvent, inactive corporation."

19 Under the case of Gavin v. Reid, which I have cited
20 in my memorandum of law, the Federal District Court of
21 Pennsylvania was faced with the same problem. It had a
22 Delaware corporation being sued in the State of Pennsylvania
23 where the Pennsylvania corporation no longer was doing
24 business in the State of Pennsylvania at the time that the
25 action was commenced.

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1 The Pennsylvania corporation, the Delaware
2 corporation had moved to dismiss this action in the
3 State of Pennsylvania on the grounds that there was no
4 diversity because its principal place of business was in the
5 State of Pennsylvania.

6 The Federal District Court for the Eastern
7 District of Pennsylvania held that because of the fact that
8 there was no business in the State of Pennsylvania --

9 THE COURT: Is the corporation a plaintiff in this
10 action?

11 MR. ROTHMAN: Yes, sir.

12 THE COURT: You are the plaintiff, Lee Wolfman is
13 the plaintiff?

14 MR. ROTHMAN: No, sir. TV Consumer Products.

15 In a stockholder's derivative action the plaintiff
16 and the real party in interest is the corporation and the
17 corporation is --

18 THE COURT: That is as phony as a \$3 bill.

19 MR. ROTHMAN: I have read the law.

20 THE COURT: You are the plaintiff in this lawsuit,
21 Lee Wolfman individually.

22 MR. ROTHMAN: It is a derivative action. If you
23 look at the addendum clause the only relief sought is on
24 behalf of Institute of Pattern Design.

25 THE COURT: We have a disagreement, counselor,

1 eobr

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2 and I am finding against you. I don't desire to listen to
3 you any longer. The motion is granted. Submit an order.

4 MR. ROTHMAN: I respectfully submit I spent
5 48 hours to prepare a brief. I think you should at least
6 reserve decision and read the brief. I worked hard on the
7 brief. I was never given an opportunity --

8 THE COURT: Counselor, you heard me, didn't you?
9 You take exception to my ruling and my conduct and it is
10 indicated on the record and whatever I do is with an ex-
11 ception to you. You will have to continue on in some other
12 forum, not before me.

13 MR. ROTHMAN: Under Rule 21 will you just discontinue
14 as to Lippman and we will continue against Weiss?

15 THE COURT: Not at this point in time. You can
16 make a motion, but I will not entertain a motion except
17 this particular phase. I was only going to decide this
18 particular aspect of it and anything else you want to do after
19 I hand down my ruling you are free to do.

20 MR. ROTHMAN: As you know, the defendant Weiss
21 has not moved, only the defendant Lippman. Under Rule 21
22 you are allowed to sever the actions.

23 THE COURT: Look, if there is no diversity, there
24 is no diversity and I couldn't care less who the other
25 people involved are. The Court sui sponte must find

1 eobr

6

2 jurisdiction first.

3 MR. ROTHMAN: Would you state for the record
4 why in your opinion there is no diversity?

5 THE COURT: I will write it down on a piece of
6 paper and you can take an exception to it and go up on that
7 piece of paper. I will write a memorandum decision on it.

8 MR. ROTHMAN: Will it be done today?

9 THE COURT: It will be done in about an hour and a
10 half. While I am on trial here I will be writing it.

11 MR. ROTHMAN: What I want to know is based upon the
12 law, as I understand it, there is complete diversity,
13 absolute complete diversity.

14 THE COURT: There isn't and I will be handing it
15 down and if you will keep in touch with my office, we will
16 tell you when we file it. Okay.

17 MR. ROTHMAN: Yes, sir.

18 MR. ARIOFF: Thank you.

19 - - -

Eckhaus, Guston & Hoffman
COUNSELLORS AT LAW

JACK ECKHAUS
HERBERT M. GUSTON
DAVID M. HOFFMAN

600 VALLEY ROAD

WAYNE, N. J. 07470

December 3, 1971

Jessel Rothman, Esq.
Halpern & Rothman
605 Third Avenue
New York, N. Y. 10016

Re: Institute of Pattern Design

Dear Jess:

I enclose herewith copy of memo from Norm Lippman, together with attachment for Internal Revenue.

Evidently, the field officer of the Internal Revenue has requested that this material be signed immediately by the officers. If this is not done, apparently the field agent advised that IRS will take whatever action he deems necessary to seize the property of the corporation. Apparently, Morty has already signed the financial statement prepared by Mr. Lippman.

Would you please give this your prompt attention and advise as to whether or not it is going to be signed and returned. If so, will you please return directly to Norman Lippman with carbon copy to me.

Sincerely,

ECKHAUS, GUSTON & HOFFMAN

By:

Herbert M. Guston
Herbert M. Guston

HMG:ef
encls.

CC: Mr. Norman Lippman
Mr. Morton Weiss

From the Desk of...

NORMAN LIPPMAN

Marty

I see and you must
sign this form and mail
in enclosed envelope
immediately

DATE _____

FORM 433-AB
(REV. JULY 1966)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

STATEMENT OF FINANCIAL CONDITION AND OTHER INFORMATION

1. TAXPAYER'S NAME AND ADDRESS Institute of Pattern Design Inc.		2. HOME PHONE	3. CHECK APPROPRIATE BLOCK: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> CORPORATION	
4. IF BUSINESS, SHOW ADDRESS AND EMPLOYER IDENTIFICATION NUMBER Institute of Pattern Design Inc. 132657117			5. BUSINESS PHONE Discontinued	
6. ARE FORECLOSURE, BANKRUPTCY, RECEIVERSHIP, OR ASSIGNMENT FOR BENEFIT OF CREDITORS PROCEEDINGS PENDING? <div style="text-align: right;"> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO </div>				
IF INDIVIDUAL, COMPLETE THIS SECTION AND REVERSE OF THIS FORM				
7. OCCUPATION HUSBAND (H) WIFE (W)		8. SOCIAL SECURITY NUMBER (H) (W)		9. AVERAGE WEEKLY TAKE HOME PAY (H) (W)
10. HUSBAND'S EMPLOYER (Name and Address)		11. HUSBAND'S FIRST NAME (If not shown above)	12. PHONE	13. HOW LONG EMPLOYED
15. WIFE'S EMPLOYER (Name and Address)		16. WIFE'S FIRST NAME (If not shown above)	17. PHONE	18. HOW LONG EMPLOYED
20. OTHER INCOME (Source) Fold			21. AMOUNTS	22. DATES RECEIVED Fold
23. MARITAL STATUS <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED	24. NUMBER OF EXEMPTIONS (Excluding H & E) 5		25. NAME AND ADDRESS OF NEXT OF KIN (Other than spouse) (H) (W)	

IF PARTNERSHIP OR CORPORATION, COMPLETE THIS SECTION AND REVERSE OF THIS FORM

26. ESTIMATED AVERAGE NET INCOME FOR NEXT SIX MONTHS None		27. NET INCOME FOR PAST 2 YEARS 3/31/71 19 \$ None 19 \$				
28. GIVE THE FOLLOWING INFORMATION ON OFFICERS OR PARTNERS						
NAME AND TITLE	ADDRESS	NUMBER OF SHARES OR INTEREST				
Morton Weiss Pres.	2150 Center Ave. Fort Lee, N.J.	50				
Lee Wolfman Secy.	437 Summit Ave. Englewood Cliffs, N.J.	50				
29. LIFE INSURANCE POLICIES NOW IN EFFECT						
POLICY NUMBER	NAME OF COMPANY	RIGHT TO CHANGE BENEFICIARY		AMOUNT OF POLICY	CASH SURRENDER VALUE	BALANCE DUE ON LOAN
		YES	NO			

(Over)

FORM 433-AB (REV. 7-66)

EXHIBIT 813

30. BANK ACCOUNTS WITH (NAME AND ADDRESS) Midland Bank, Englewood, N.J.	31. LOCATION OF SAFE DEPOSIT BOXES None
32. DESCRIPTION AND LICENSE NUMBER OF VEHICLES None	33. REAL PROPERTY - BRIEF DESCRIPTION AND LOCATION None

34. STATEMENT OF ASSETS AND LIABILITIES

ITEM	PRESENT VALUE	LIABILI- TIES BAL. DUE	EQUITY IN ASSET	AMOUNT OF MO. PAYMENT	PLEDGE OR OBLIGEE	DATE PLEDGED	DATE OF FINAL PAYMENT
CASH							
BANK ACCOUNTS	(6,814)						
STOCKS AND BONDS							
CASH OR LOAN VALUE ON INS.							
ACCOUNTS RECEIVABLE							
NOTES RECEIVABLE							
MERCHANDISE INVENTORY	20,000						
MACHINERY AND EQUIPMENT	3,599						
VEHICLES							
HOUSEHOLD FURNITURE							
REAL PROPERTY							
OTHER ASSETS (Describe)							
Due from TV Inc. Uncollectable	40,415						
ACCOUNTS PAYABLE		142,057					
NOTES PAYABLE Bank		10,000					
OTHER (Include judgments)							
Taxes Payable		15,262					
TOTAL	57,200	167,319	\$	\$			

FEDERAL TAXES OUTSTANDING

\$

35. HAVE YOU DISPOSED OF ANY ASSETS OR PROPERTY BY SALE, TRANSFER, EXCHANGE, GIFT OR IN ANY OTHER MANNER EXCEPT FOR FULL VALUE FROM THE BEGINNING OF THE TAXABLE PERIOD IN WHICH THE LIABILITY WAS INCURRED TO THE PRESENT DATE?
☒ NO ☐ YES - ATTACH SEPARATE STATEMENT TO SHOW AMOUNTS, DATES, CIRCUMSTANCES, ETC.

36. ADDITIONAL INFORMATION - GIVE GENERAL STATEMENT REGARDING PROSPECT OF INCREASE IN VALUE OF ASSETS OR IN PRESENT INCOME - INCLUDE TAXPAYER'S AGE AND CONDITION OF HEALTH.

Present condition of company is insolvent-inactive

AFFIDAVIT	Under the penalties of perjury, I (we) declare that the foregoing statement of assets and liabilities, and other information is true and correct to the best of my (our) knowledge and belief.	
DATE	SIGNATURE <i>Malcolm P. Weiss</i>	SIGNATURE X <i>Pres.</i>

(Reverse)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LEE WOLFMAN, Individually, and on behalf
of himself and all other stockholders of
INSTITUTE OF PATTERN DESIGN, INC., TV
CONSUMER PRODUCTS, CORP., FASHION SEWING
GUILD, INC. (a New York corporation),
FASHION SEWING GUILD, INC. (a Delaware
corporation),

Plaintiffs,

MORTON P. WEISS, SHIRLEY WEISS, NORMAN
LIPPMAN, INSTITUTE OF PATTERN DESIGN, INC.,
TV CONSUMER PRODUCTS CORP., FASHION SEWING
GUILD, INC. (a New York corporation),
FASHION SEWING GUILD, INC. (a Delaware cor-
poration) and GOLDEN RULE INTERNATIONAL, INC.
(a New Jersey corporation),

Defendants.

-----X

MEMORANDUM
AND ORDER

CANNELLA, D.J.:

In November of 1971, Lee Wolfman, a citizen of New Jersey, commenced this shareholder derivative action against Morton and Shirley Weiss (citizens of New Jersey), Norman Lippman (a citizen of New York), three New York corporations, TV Consumers Products Corp. (TVCP), Institute of Pattern Design, Inc. (IPD) and Fashion Sewing Guild (FSG-N.Y.) and one Delaware corporation, Fashion Sewing Guild (FSG-DEL.) Plaintiff, the owner of 50% of the issued and outstanding shares of TVCP and IPD (Which in turn own all of the issued

and outstanding shares of FSG-N.Y. and FSG-DEL.) alleged in his complaint that the Weisses, who own the remaining 50% of IPD and TVCP, had conspired with Lippman (the accountant for all of the corporations) to divert the assests of the corporate defendants. In March of 1974, plaintiff amended his complaint to add Golden Rule International, Inc. (Golden Rule), a New Jersey corporation, as a defendant.

By his present motion, which for reasons entirely unclear to this Court was not made until the eve of trial and more than three-and-a-half years after the filing of the complaint, defendant Lippman moves pursuant to 12 (b) (1) Fed.R.Vic.P. (but see, Fed.R.Vic.p. 12 (h) (3) to dismiss this action on the ground that the complete diversity of citizenship required by 28 U.S.C. 1332 does not exist. For the reasons detailed below, the motion is granted and the case is dismissed as to all defendants.

In order to satisfy the requirements of the diversity statute there must be "complete diversity" between the parties. That is, there must be diversity between each plaintiff and each defendant. This rule dates from Chief Justice Marshall's decision in Strawbridge v. Curtiss, 3 Cranch (7 U.S.) 267 (1806). As the Second Circuit Court of Appeals recently said in words wholly

applicable to the instant matter, "apparently Strawbridge v. Curtiss had not yet come to the draftsman's attention." Simon & Flynn, Inc. v. Time Inc., 513 F.2d 832, 833 (2d Cir. 1975).

Here, on the face of the original complaint, there is no complete diversity. The plaintiff Wolfman is a New Jersey resident as are the Weiss defendants (Morton and Shirely). Based upon this fact alone, the action must be dismissed. In his "supplemental and amended complaint", plaintiff added Golden Rule International, Inc., a New Jersey corporation, as a defendant. This, of course, also defeats diversity.

Upon being served with Lippman's long overdue memorandum of law, plaintiff quickly grasped the nature of his dilemma and responded with an argument contrary to both the law and the facts, and one previously rejected by the courts of this circuit. See Rogers v. Valentine, 306 F.Supp. 34, 39 (S.D.N.Y. 1969), aff'd, 426 F.2d 1361 (2d Cir. 1970); J.R.A. Corp. v. Boylan, 30 F.Supp. 393 (S.D.N.Y.), aff'd, 109 F.2d 1018 (2d Cir. 1940). In short, plaintiff contends that since IPD and TVCP are the real parties in interest and are not antagonistic to Wolfman, Wolfman is acting only as a corporate representative and

IPD and TVCP should be aligned as plaintiffs and Wolfman's citizenship ignored, thereby preserving this Court's diversity jurisdiction. The law, however, is otherwise, and rightly so.

The decision of the Supreme Court in Smith v. Sperling, 354 U.S. 91 (1957) conclusively precludes a finding that IPD and TVCP are not "antagonistic" to plaintiff Wolfman. In his amended complaint, plaintiff makes the following statement:

15. That plaintiff has neither demanded nor requested before the commencement of this action the defendant corporation through its officers sic, board of directors, or stockholders that it commence an action against the individual defendants for the wrongful acts committed by them for the reason that the defendants are 50% stockholders, represent 50% of the board of directors, and are, in fact, the operational heads of said corporations and in control thereof and that it would be futile and unavailing to demand that they would cause an action to be brought against themselves which, if successful, would result in judgments against themselves.

Following the decision in Smith and determining the issue of "antagonism on the face of the pleadings and by the nature of the controversy," 354 U.S. at 96, it is clear that where the defendants accused of corporate waste are the owners of 50% of the stock and are the operational heads of the corporation, there is "antagonism" within the meaning of

Smith, Compare, Lewis v. Odell, 503 F.2d 445 (2d Cir. 1974).

As the court stated in Raese v. Kelly, 59 F.R.D. 612, 615

(N.D. W.Va. 1973) on almost identical facts:

A review of the pleadings here, including plaintiffs' theories, leaves no doubt that Supply Company, through the individuals who manage and control it, is antagonistic, as defined by Smith v. Sperling, to the enforcement of the claims asserted. In sum, the Kellys are accused of diverting Supply Company's assets to themselves or to other companies controlled by them. The plaintiffs allege that "demand upon the defendant Supply Company to initiate this action for its benefit would be futile and unavailing." (Complaint, par. 6). Moreover, the same counsel pull the laboring oar in the defense of this lawsuit for both Supply Company and the Kellys. It appears therefore that Supply Company was rightfully and necessarily made a defendant, and it cannot, for jurisdictional purposes, be regarded otherwise than as a defendant. The conclusion then is inescapable that this Court is without jurisdiction because the plaintiffs and defendant Supply Company are all West Virginia citizens.

Having concluded that IPD and TVCP must be aligned as defendants, we do not reach plaintiff's argument that Wolfman is only a nominal party whose citizenship should not be considered for diversity purposes.

For the reasons expressed herein, upon the motion of defendant Lippman and sua sponte pursuant to Fed.R.Civ.P. 12(h) (3), it is hereby

ORDERED that the Clerk of the Court enter judgment dismissing this action for lack of subject matter jurisdiction as to all defendants; and it is hereby further

ORDERED that each party shall bear its own costs of the action.

It is SO ORDERED.

/S/ JOHN M. CANNELLA, U.S.D.J.

Dated: New York, N.Y.
July 25, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
LEE WOLFMAN, individually and on behalf of
himself and all other stockholders of INSTITUTE
OF PATTERN DESIGN, INC., TV CONSUMER PRODUCTS,
CORP., FASHION SEWING GUILD, INC., (a New York
corporation), FASHION SEWING GUILD, INC. (a
Delaware corporation),

71 Civ. 5138
(JMC)

Plaintiffs,

-against-

MORTON P. WEISS, SHIRLEY WEISS, NORMAN
LIPPMAN. INSTITUTE OF PATTERN DESIGN, INC.,
TV CONSUMER PRODUCTS CORP., FASHION SEWING
GUILD, INC., (a New York corporation), FASHION
SEWING GUILD, INC., (a Delaware corporation)
and GOLDEN RULE INTERNATIONAL, INC., (a New
Jersey corporation),

NOTICE OF APPEAL

Defendants.
-----X

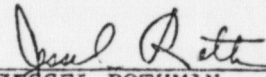
NOTICE is hereby given that TV CONSUMER PRODUCTS CORP.,
and INSTITUTE OF PATTERN DESIGN, INC., by LEE WOLFMAN, individually
and as stockholder of TV CONSUMER PRODUCTS CORP., and INSTITUTE OF
PATTERN DESIGN, INC., the plaintiffs above named, hereby appeals to
the United States Court of Appeals for the Second Circuit, from the
Order dismissing the complaint against MORTON P. WEISS, NORMAL LIPPMAN
and GOLDEN RULE INTERNATIONAL, INC., for failure of diversity of citizen-
ship, therefore, for lack of jurisdiction of the subject matter,
entered in this action on the 25th day of July, 1975.

Dated: New York, New York
August 5, 1975

TO: Clerk, United States District
Court
Foley Square, New York

D'Amato, Costello & Shea, Esqs.
116 John Street
New York, New York 10038

Mitchell Horn?, Esq.
450 Seventh Avenue
New York, New York 10001


JESSEL ROTHMAN
Attorney for Plaintiffs
LEE WOLFMAN, TV CONSUMER
PRODUCTS CORP. and
INSTITUTE OF PATTERN
DESIGN, INC.
Office & P.O. Address
605 Third Avenue
New York, New York 10016

JUDGE CANNELLAUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEE WOLFMAN, et al

vs.

MORTON P. WEISS et al

:

:

:

:

Case # 71 Civ 5138

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk, of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- E, and the original filed papers numbered 1 thru 50, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILEDBRIEF DESCRIPTION

12-6-73	Consent order of substitution of attorneys for defendant Lipman.
---------	--

IN TESTIMONY WHEREOF I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 6th day of August, in the year of our Lord, one thousand nine hundred and seventy five, and of the Independence of the United States the 200th year.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

Frances Carter , being duly sworn, deposes
and says:

 That deponent is not a party to the action, is over
18 years of age and resides at Hempstead , New York.

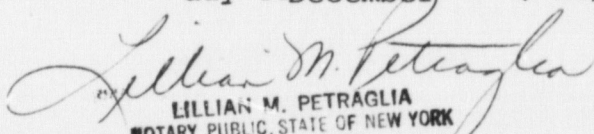
 That on the 29th day of December , 19 75
deponent served the within Record of appeals
upon the following:

D'AMATO, COSTELLO & SHEA
116 John Street
New York, N.Y. 10038

Mitchell Horne, Esq.
450 Seventh Avenue
New York, N. Y.

at the address designated by said attorneys(s) for that purpose by
depositing a true copy of same enclosed in a postpaid, properly
addressed wrapper, in a post office-official depository under the
exclusive care and custody of the United States Post Office Depart-
ment within the State of New York.

Sworn to before me this 29th
day of December , 1975


LILLIAN M. PETRAGLIA
NOTARY PUBLIC, STATE OF NEW YORK
No. 1-364490
Qualified in Nassau County
Commission Expires March 30, 1976

